

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 21, 1999

+ + + + +

The Public Hearing convened in Room 220, 441 Fourth Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JOHN PARSONS	Zoning Commission

STAFF PRESENT:

SHERI PRUITT	Director
PAUL HART	Staff
JOHN NYARKU	Staff
BEVERLY BAILEY	Staff
ALAN BERGSTEIN	Office of Corporation Counsel

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STEVE SHER, Esq.
Wilkes, Artis, Hedrick & Lane, Chartered
Suite 1100
1666 K Street, N.W.
Washington, D.C. 20006-2897

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ALISON PRINCE, Esq.
Wilkes, Artis, Hedrick & Lane, Chartered
Suite 1100
1666 K Street, N.W.
Washington, D.C. 20006-2897

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JAMES A. MERKLINGER, Esq.
1025 Connecticut Avenue, N.W., Suite 200
Washington, D.C. 20036-5425

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PATRICK BROWN, Esq.

Greenstein, DeLorme and Luchs
1620 L Street, N.W. #900
Washington, D.C. 20036

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SUSAN COOK, ESQ.
Hogan and Hartson
555 13th Street, N.W.
Washington, D.C. 20004
(202) 637-5600

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PATRICK BROWN, Esq.
Greenstein, DeLorme and Luchs
1620 L Street, N.W. #900
Washington, D.C. 20036

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P-R-O-C-E-E-D-I-N-G-S

(9:35 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the July 21 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and representing the Zoning Commission is Mr. Parsons. Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variance cases will proceed as follows: the statement and witnesses of the applicant; government reports including Office of Planning, Department of Public Works, ANC, et cetera; persons and parties in support; persons and parties in opposition; closing remarks by the application.

The order of procedure for appeal of applications will be as follows: statement and witnesses of the applicant; the zoning administrator or other government official; the owner, lessee or operator of the property involved, if not, the appellant; the ANC within which the property is located; the intervener's case; rebuttal and

1 closing remarks by the applicant.

2 Cross examination of witnesses is permitted for
3 persons or parties with a direct interest in the case. The
4 record will be closed at the conclusion of each case except
5 for any material specifically requested by the Board, and the
6 staff will specify at the end of the hearing exactly what is
7 expected.

8 The decision of the Board in these contested
9 cases must be based exclusively on the public record. To
10 avoid any appearance of the contrary, the Board requests that
11 persons please not engage the members of the Board in
12 conversation. Please turn off any beepers and all phones at
13 this time so as not to disrupt these proceedings.

14 At this time, the Board will sit any
15 preliminary matters. Preliminary matters are those which
16 relate to whether a case will or should be heard today, such
17 as requests for postponement, continuance or withdrawal, or
18 whether proper and adequate notice of the hearing has been
19 given. If you are not prepared to go forward with the case
20 today or if you believe that the Board should not proceed, now
21 is the time to raise such a matter. Are there any preliminary
22 matters? Please come forward.

23 MS. PRINCE: Alison Prince, here today on
24 behalf of Tudor Place, Application No. -- it is a modification
25 of Application No. 15774. We filed a request for postponement
26 on June 1. It is my understanding from the staff that we will

1 be rescheduled until October, but I was asked to appear today.
2 The reason for the postponement was to provide ample
3 opportunity to work with the community. The community is
4 strongly opposed to our proceeding forward today and we are
5 not prepared to go forward today, but we are prepared to go
6 forward in October.

7 CHAIRPERSON REID: Okay.

8 MS. KING: I have no problem. That is fine.

9 CHAIRPERSON REID: Yes. I think the ANC wanted
10 to have time to meet and to vote on the application.

11 MS. PRINCE: That is right.

12 CHAIRPERSON REID: I have no problem with it.

13 Mr. Parsons? Do you wish to schedule a date certain at this
14 time?

15 MS. PRINCE: I had tentatively discussed a date
16 in early October with Mr. Hart of your staff. I'd like that
17 confirmed so that I can share that with the ANC.

18 CHAIRPERSON REID: Okay.

19 MS. PRUITT: We can reschedule it for October
20 6.

21 MS. PRINCE: Thank you.

22 CHAIRPERSON REID: Thank you very much.

23 MR. MONTGOMERY: My name is Jim Montgomery, and
24 I am here on the case that was originally scheduled for this
25 date, that is Minor Krause, 16443. I wrote a letter stating
26 that I had called on Monday. Mr. Aguglia from Hunt and

1 Williams was supposed to be here also. Should I wait until he
2 gets here?

3 CHAIRPERSON REID: Who?

4 MS. PRUITT: Mr. Aguglia is actually -- Mr.
5 Krause is the applicant and Mr. Aguglia is the person in
6 opposition. The applicant is requesting the postponement and
7 it is not necessary that Mr. Aguglia
8 -- he is aware of it.

9 MR. MONTGOMERY: Okay, he is not an applicant. I
10 just wanted --

11 CHAIRPERSON REID: What is your case number,
12 sir?

13 MR. MONTGOMERY: 16443.

14 MS. PRUITT: It is a case that has been
15 rescheduled and it was tentatively put at the end of the
16 agenda. You have a package.

17 MS. KING: I don't have one.

18 MS. PRUITT: You had -- that package was
19 already given to you. It should have been along with -- staff
20 should have indicated that you should have brought it, but we
21 did not, and we apologize.

22 MS. KING: I received nothing about it. I
23 don't even know what you are talking about.

24 CHAIRPERSON REID: Okay. What does the case
25 involve, do you know?

26 MR. MONTGOMERY: It involves the extension of

1 parking -- a variance to extend the -- the parking has been
2 extended and this goes back over six years, and we are seeking
3 a variance to make the extension legal.

4 CHAIRPERSON REID: All right.

5 MS. PRUITT: And they are requesting a
6 postponement because they are not ready to go forward.

7 CHAIRPERSON REID: Okay. But I don't see this
8 on the agenda anywhere.

9 MS. PRUITT: This was a case that we talked
10 about earlier that you heard -- it started already and then
11 they asked for a postponement and continuing another
12 postponement.

13 MS. KING: Madam Chair, I would ask the staff
14 if things are not published on the agenda and if they are
15 going to come before us, that they would at least have the
16 courtesy to let us know so that we can bring the appropriate
17 files or understand why we have files that do not appear on
18 the agenda. But also it seems to me that even though it may
19 not be legally required, that if there is time to publish
20 additions to our agenda, even if they are postponements, to
21 publish them again for public notice that it would not be
22 harmful. But at the very least, you and I and the other
23 members should be informed of what is going to be coming
24 before us on any day of any meeting.

25 CHAIRPERSON REID: Absolutely. I thought we
26 indicated earlier, staff, that we would really like to see any

1 items that we are going to be taking up at the hearings
2 reflected on the agenda, not only for our purposes but also
3 for anyone who happens to come to the hearing room who may
4 want to sit for or to elicit any subsequent hearings that they
5 would be so advised.

6 MS. KING: I agree entirely.

7 CHAIRPERSON REID: So I hope that we will have
8 that accommodation, Ms. Pruitt-Williams. Thank you. Now, for
9 the matter that you are referring to, for your case I don't
10 have any problem with it. It has been postponed once already?

11 MR. MONTGOMERY: Yes.

12 CHAIRPERSON REID: And the reason why you are
13 asking for an additional postponement is for what -- repeat it
14 again?

15 MR. MONTGOMERY: Well, on Monday it was not
16 scheduled. I called up and it was not scheduled for today.
17 Another aspect of this, I have here -- and this has been filed
18 with you -- this is a decision and order of the DCRA, the
19 Office of Adjudication, which is pertinent to this case and we
20 are appealing to the Board of Zoning Adjustments. I would
21 like to have -- I wrote a letter requesting that this appeal
22 be consolidated with this case as it covers the same factors,
23 the same properties, and there is a lot of background in here
24 on the issues.

25 CHAIRPERSON REID: Okay. So the basis is
26 because of lack of notification or preparedness.

1 MS. PRUITT: Madam Chair, let me clear up.
2 This case was -- this case was already heard twice, so it has
3 been advertised. And the Board's policy has been, since I
4 have been here and prior to that, that when a case is
5 postponed, the applicant -- we postpone it to a date certain
6 in front of the applicant so we do not have to go back and
7 renotice. Now, we will certainly make the attempt and we will
8 make sure that we put it on your agendas. These agendas are
9 actually published 40 days prior to them coming out. So it is
10 very hard for us to go back and redo the pertinent notice
11 because we don't have that opportunity.

12 CHAIRPERSON REID: They were -- excuse me, Ms.
13 Pruitt-Williams, they were notified at the public hearing?

14 MS. PRUITT: Correct. Right.

15 MS. KING: And when was the public hearing?

16 MS. PRUITT: The first time they were scheduled
17 was March -- I believe it was March.

18 MS. KING: There was plenty of time between
19 their being rescheduled in March and your publishing the
20 notice for today's hearing for it to be on there.

21 MS. PRUITT: April 21.

22 MS. KING: Even though it is not required to be
23 published on the --

24 MS. PRUITT: Ms. King, they were heard on April
25 21. That was the hearing date.

26 MS. KING: Okay.

1 MS. PRUITT: And then it was rescheduled from
2 there another time. This is the third postponement.

3 MS. KING: Well, at least let us know what we
4 are supposed to be hearing, even if you don't let the public
5 know.

6 MS. PRUITT: Staff understands and notice of
7 that is taken and we will do so.

8 CHAIRPERSON REID: Also, this is an appeal?

9 MR. MONTGOMERY: Yes.

10 MS. PRUITT: No. Actually, that came in just
11 this week.

12 MR. MONTGOMERY: We just got this on Monday.
13 This case was heard on February 22 at DCRA.

14 MS. PRUITT: They are just filing the appeal
15 with the office this week.

16 MR. MONTGOMERY: We just got the decision.

17 MS. PRUITT: This is a new -- this is in
18 addition to the process. Then came for an application and
19 then they filed an appeal subsequent to their application.

20 CHAIRPERSON REID: All right. So --

21 MR. BERGSTEIN: Madam Chair, if -- Mr. Aguglia
22 is not here. If the applicant wants to consolidate a new
23 appeal with this application, and that is what is being talked
24 about, it seems to me that he should request that in writing
25 and allow Mr. Aguglia a chance to respond. And then the Board
26 could rule upon it. But at this point Mr. Aguglia --

1 MR. MONTGOMERY: Certainly I would like to have
2 him have an opportunity to respond. I did send him a notice
3 about this, but I would --

4 CHAIRPERSON REID: I think that that would be
5 the proper procedure to allow Mr. Aguglia, if that is his
6 name, to respond to your submission. And to go ahead and give
7 you another postponement. This being the third, it should
8 also be the last. This has been continued twice?

9 MS. PRUITT: This is the second time they are
10 requesting it.

11 CHAIRPERSON REID: The second time.

12 MS. PRUITT: Right. The third time we are
13 here, though.

14 CHAIRPERSON REID: Okay. All right. Well, then
15 we will go ahead and -- I have no problem with it if the other
16 Board members have no problem with it.

17 MS. KING: I'll be gone by that time.

18 CHAIRPERSON REID: We are postponing it for a
19 date certain.

20 MS. PRUITT: Why don't we put it on the October
21 1, so that will allow me to give everybody notice.

22 CHAIRPERSON REID: That gives enough time to be
23 able to do the notices back and forth.

24 MS. PRUITT: And we will inform Mr. Aguglia,
25 who is represented by -- who is representing the opposition.

26 CHAIRPERSON REID: Thank you.

1 MR. MONTGOMERY: May I ask on the procedure for
2 this consolidation and also the appeal, if it is consolidated,
3 can we avoid the \$800.00 appeal fee?
4 MS. PRUITT: No.
5 CHAIRPERSON REID: They are two separate
6 issues.
7 MR. MONTGOMERY: Can we get an extension? 15
8 days is the limit to file -- to come up with the \$800.00 and
9 file the appeal. Can we get an extension of that?
10 MS. PRUITT: This is an appeal of DCRA's
11 decision?
12 MR. MONTGOMERY: Yes.
13 CHAIRPERSON REID: Mr. Aguglia, please come
14 forward. You just missed discussing this particular case.
15 MR. AGUGLIA: I apologize for being late.
16 MR. MONTGOMERY: I asked if we should wait.
17 MR. AGUGLIA: Okay. You are asking for a
18 continuance?
19 MR. MONTGOMERY: We are, yes.
20 MS. KING: But he is also appealing the DCRA
21 decision and wants to consolidate the two cases.
22 MR. AGUGLIA: Well, our feeling is that this is
23 -- I am trying to put it politely, just a stall tactic or
24 delay tactic. He has asked for a medical variance, and Ms.
25 Reid said there is no such thing as a medical variance. So he
26 asked for more time to submit opposition -- an opposition to

1 our various briefs that we filed in this case. Absolutely
2 nothing has been filed. Nothing. We then got the decision on
3 Monday from the Attorney Examiner who stated that there were
4 infractions and there were violations and that there was a
5 fine and a penalty, and I had that submitted to the Board on
6 Monday. So our feeling is --

7 MS. KING: I remember this case.

8 CHAIRPERSON REID: Yes. Let him continue.

9 MR. AGUGLIA: So this is an attempt -- the
10 illegal pads have already been constructed. They have already
11 been constructed. This is an attempt to try to get some sort
12 of retroactive relief, which I don't believe is permissible
13 either. I don't think he has the grounds for a variance and I
14 don't think he has the grounds to get some sort of a
15 retroactive application of this. And I think this is just a
16 delay tactic to keep the illegal pad there so they can use it
17 for additional parking for people who are living in the house,
18 and it is just another attempt to continue this illegality.
19 We would prefer to go forward and have the case heard.

20 MR. MONTGOMERY: I would like to say we only
21 received this on Monday. We have been waiting for this
22 opinion and we only got it on Monday, two days ago. It is 15
23 pages long. What is in here is relevant to the application
24 for a variance. So that is why we are asking that it be
25 consolidated -- the appeal be consolidated with the variance.

26 MS. KING: Mr. Aguglia, what do you want? We

1 know what he wants us to do. What do you want us to do?

2 MR. MONTGOMERY: Are you speaking to me?

3 MS. KING: No, I am speaking to Mr. Aguglia.

4 MR. AGUGLIA: Does the Board have jurisdiction
5 to hear or entertain the appeal of the infraction? Does this
6 Board?

7 MS. PRUITT: Yes, they do. We have not
8 scheduled civil infractions for a while. We have a few to do.

9 MR. AGUGLIA: They do. I personally think it
10 has -- one does not have anything to do with the other. I
11 realize the Board is interested in economy. I realize that.
12 But I don't think one has anything to do with the other. He
13 was cited for not going to -- not getting a building permit
14 and not going to the BZA for the variance and not going to
15 HPRB in order to get approval to do the permit work because it
16 is in an historic district.

17 MS. KING: It is in an historic district?

18 MR. AGUGLIA: Yes, it is in the Cleveland Park
19 historic district. So none of those were followed in the
20 extension of the legal pad. So that to me seems to be very
21 different from the request to have a variance based upon the
22 three criteria which he cited, and no support for any of it.

23 CHAIRPERSON REID: If I recall correctly, it
24 was -- the application was in effect for a medical variance,
25 and we discussed that and said that was inappropriate and that
26 you would have to compile a case predicated upon the typical

1 or usual basis for a variance request or variance relief, and
2 that is what your case is supposed to be built upon. Have you
3 done that?

4 MR. MONTGOMERY: It has been -- well, let me
5 say first with respect to this case, the pads -- there was an
6 oral approval given in 1993. This has been going on for --

7 MS. KING: An oral approval by whom?

8 MR. MONTGOMERY: Someone in the building
9 office.

10 MS. KING: There is no such thing in the
11 District Government as an oral approval.

12 MR. MONTGOMERY: No. What I wanted to point
13 out is that the pad was --

14 MS. KING: It doesn't exist, sir.

15 MR. MONTGOMERY: I wanted to point out that the
16 pad was, in fact, extended with the understanding that it was
17 approved.

18 MS. KING: Have you filed an affidavit with us
19 from the person who gave you that oral approval saying that he
20 approved it -- he or she approved it?

21 MR. MONTGOMERY: No. We have an affidavit from
22 Mr. Krause that he did get the approval. But I wanted to
23 point out that this has been going on since 1993, six years,
24 and we would like --

25 MS. KING: Madam Chair, I would suggest that we
26 consolidate this whole case and hear it on the 1st of October

1 and dispose of it then. But there will be no further
2 postponements. Any further requests for postponements, it
3 seems to me, of either the appeal or the case itself should
4 lead us to dismissal of the matter, if we can.

5 CHAIRPERSON REID: Well, I would agree that
6 given the fact that there seems to be a lot of loose ends to
7 this particular case, that we give one additional extension
8 until October 1 --

9 MS. PRUITT: It is October 6, I am sorry.

10 CHAIRPERSON REID: October 6. And that is the
11 end of any further extensions. So everything can be taken
12 care of at that time.

13 MR. AGUGLIA: Will the cases be consolidated at
14 that point?

15 CHAIRPERSON REID: The cases -- I have no
16 problem with the cases being consolidated.

17 MS. PRUITT: That will give us enough time for
18 a notice too. Because, I mean, we just got the application.

19 CHAIRPERSON REID: Right. Right. For more
20 efficient use of our time, it would be so done -- that we
21 would consolidate.

22 MS. PRUITT: We can do so, yes.

23 MR. AGUGLIA: Has an appeal actually been
24 filed?

25 MR. MONTGOMERY: I filed it.

26 MR. AGUGLIA: Was there -- I mean an appeal to

1 consolidate it.

2 MR. MONTGOMERY: Not in the formal sense. We
3 have to pay an \$800.00 fee.

4 MR. AGUGLIA: I mean, at this point -- once it
5 comes in what you are saying is that you don't object to
6 consolidation. There is nothing to consolidate at this point
7 because there is no appeal.

8 MR. MONTGOMERY: No. I filed a notice of
9 appeal, but it has to be on your form and I didn't have your
10 form. We will file it.

11 MS. PRUITT: Excuse me, Mr. Montgomery. Is
12 that correct?

13 MR. MONTGOMERY: Yes.

14 MS. PRUITT: So let me just be sure. You filed
15 -- did you file an appeal at the front desk including your
16 fee?

17 MR. MONTGOMERY: No. The fee has not been paid.

18 MS. PRUITT: So we really don't have a case to
19 consolidate. Until we get that, we don't give it -- it is not
20 a case in this office.

21 MR. MONTGOMERY: Well, can we get a ruling
22 subject to filing within the 15 days?

23 MS. PRUITT: That is up to the Board. But you
24 would need to then file an appeal for civil infraction.

25 MR. BERGSTEIN: Why don't you -- well, what I
26 would suggest -- because you can't consolidate something that

1 hasn't been filed yet. What I would suggest is that when he
2 files the appeal that it be accompanied by a request for
3 consolidation. Mr. Aguglia, you don't oppose that?

4 MR. AGUGLIA: Given the Board economy of time,
5 I will not oppose.

6 MR. BERGSTEIN: All right. So it would be an
7 unopposed request for consolidation. At that point, it could
8 be consolidated and he understands the hearings would be held
9 together on that date. Is that a --

10 CHAIRPERSON REID: All right. That is fine
11 with me.

12 MS. KING: And, Madam Secretary, since I will
13 not be hearing any new cases after the end of September, I
14 will come back to finish this case. Therefore, I would like
15 it to be the first case -- we have a meeting in the morning
16 and then start the hearing in the afternoon?

17 MS. PRUITT: Correct.

18 MS. KING: Would you be kind enough to schedule
19 it as the first case?

20 MS. PRUITT: Yes.

21 MS. KING: So that I don't have to hang around
22 all afternoon.

23 MR. MONTGOMERY: I have another procedural
24 question. That is on filing a brief. We have permission to
25 file a brief?

26 CHAIRPERSON REID: You are asking if you have

1 permission? You mean your pre-hearing submission?

2 MR. MONTGOMERY: Yes.

3 CHAIRPERSON REID: Sure. Sure. Just make sure

4 that you are within the time frame as far as Mr. Hart. Meet

5 with him -- confer with him after the hearing to determine

6 when you have to have your submissions in.

7 MR. MONTGOMERY: With Mr. Hart?

8 CHAIRPERSON REID: Mr. Hart is the gentleman

9 sitting right beside Ms. Pruitt-

10 Williams. He is the --

11 MR. MONTGOMERY: So I should check with him

12 later?

13 CHAIRPERSON REID: Yes.

14 MS. KING: But we will be hearing both cases.

15 And therefore, as you know, there is no such thing as a

16 medical variance, sir. You've got to make your case, which

17 you failed to do before. This is your opportunity to make

18 your case.

19 MR. MONTGOMERY: Yes, on additional variance

20 arguments. Thank you.

21 CHAIRPERSON REID: Thank you. Mr. Aguglia,

22 thank you very much. Are there any other preliminary matters?

23 Does the staff have any preliminary matters?

24 MS. PRUITT: Actually, they were handled.

25 CHAIRPERSON REID: All right. Thank you. Please call

26 the first case of the day.

1 MR. HART: The first case of the morning,
2 16471, which is an appeal of 1300 First Street, L.L.C.,
3 pursuant to 11 DCMR 3105 and 3106, from the administrative
4 decision of the Zoning Administrator to issue a building
5 permit No. B00183471, for a sports bar and restaurant for 190
6 seats, "not sexually oriented", the appellant will be affected
7 by the proposed use and the lack of parking and loading space
8 in a C-3-C District at premises 33 New York Avenue, N.E.
9 (Square 671, Lot 27). Will those persons planning to testify
10 please come forward and take the oath?

11 (WITNESSES ARE SWORN.)

12 MS. KING: Madam Chair, I have two separate
13 maps showing where this plot is. Did you notice that? That
14 the one supplied by -- I believe by Mr. Sher -- is yours the
15 one with the black arrow? And then we have another one with a
16 yellow. Which plot is this?

17 MR. SHER: I supplied -- for the record, my
18 name is Steven E. Sher, the Director of Zoning Services, with
19 the Law Firm of Wilkes, Artis, Hedrick and Lane. I believe
20 that the one in your left hand is the one that we had included
21 in our statement of the Appellant.

22 MS. KING: With the arrow?

23 MR. SHER: With the arrow. That is correct.

24 MS. KING: Because this plot is the one that is
25 in yellow on something that was also in my file.

26 MR. SHER: That is not ours.

1 MS. KING: Exactly which lot is it?

2 CHAIRPERSON REID: Oh, gee. That is not

3 -- you see, right here. This has been highlighted in yellow

4 and that one as well.

5 MS. KING: No, but you see Steve is saying that

6 this is the plot. Would you come forward and tell us exactly

7 where we are?

8 CHAIRPERSON REID: Is it number -- what is the

9 number on the lot? On the Square?

10 MR. SHER: The building is 33 New York Avenue,

11 and it is I believe correctly the one that we have identified

12 with the arrow. It runs through from New York Avenue to N

13 Street. There is a building on the lot and then there is an

14 open area adjacent to the building on the west side of the

15 building. But this is the lot here. I do not believe this one

16 is correct.

17 MS. KING: So they own this whole thing?

18 MR. SHER: Yes.

19 MS. KING: Including this blank space?

20 MR. SHER: Not this.

21 MS. KING: But not that. Okay.

22 CHAIRPERSON REID: Okay. Show me, Mr. Sher,

23 which one --

24 MS. KING: What he is saying is that this is

25 what they own.

26 CHAIRPERSON REID: And that has that circle

1 around it?

2 MR. SHER: It is not this.

3 CHAIRPERSON REID: Okay. Then who highlighted

4 that?

5 MS. PRUITT: That was done by Mr. Nyarku. I am

6 going to get him now.

7 CHAIRPERSON REID: Speak up, please. Because we

8 don't have the PA system. So you have to subject your voices.

9 Put a circle around exactly what parcel we are discussing here

10 this morning, sir.

11 MR. SHER: It is one lot.

12 MR. PARSONS: Okay, what is this area?

13 MR. SHER: That represents the lot itself.

14 That is the tax plat and the other is the Sandborne Atlas plat

15 that shows where the property is with the building on it.

16 CHAIRPERSON REID: Speak loudly and give your

17 name.

18 MR. GELL: My name is Steven Gell. I am

19 representing the lessee of the property. This is lot 27.

20 There is a building and a vacant lot which is used for

21 parking, and that is shown perhaps a little bit better on this

22 diagram, which Mr. Sher received.

23 MS. KING: Do you have multiple copies of that?

24 MR. GELL: Yes, I do.

25 CHAIRPERSON REID: Give it to staff, please.

26 CHAIRPERSON REID: It is actually two parcels

1 that have been combined -- two lots --

2 MR. SHER: It is just one lot. It is one lot

3 27. There is a building and an open area on the same lot.

4 MR. GELL: One of the maps does not show the

5 building. It just shows the whole lot.

6 CHAIRPERSON REID: All right, maybe get that

7 and give that to staff.

8 MR. GELL: This one shows the building separate

9 from the lot.

10 MR. SHER: That yellow highlighting is wrong.

11 MS. BAILEY: Madam Chair -- excuse me, Madam

12 Chair. The information that is being discussed is not being

13 heard by the audience and there are some members of the

14 audience who are interested in the case.

15 MS. KING: I can't hear a word you are saying,

16 Beverly.

17 CHAIRPERSON REID: What she said is that the

18 discussion heard at the dias was not picked up by persons in

19 the audience who are interested in the case. And basically

20 what we were doing was that there was a problem with the plat

21 map and the Sandborne map, where the wrong lot on the square

22 was identified. So we were getting a clarification as to

23 exactly what plat we were talking about. And Mr. Gell

24 submitted for us a more distinctive plat that implicitly shows

25 to us exactly where the parcel is and where the property is

26 located. And what it is is a building and a lot combined.

1 MR. GELL: That is correct.

2 MR. BERGSTEIN: Excuse me, is there any way for

3 the record that we could just mark it somehow so that we know

4 what that document is? Either put an A on it or something so

5 that we all know what that document is?

6 MS. KING: It has --

7 CHAIRPERSON REID: Exhibit A.

8 MR. BERGSTEIN: Or describe it somehow so that

9 --

10 MS. KING: It is a fax dated 6/28/99 from

11 Rudnick-D.C. And it is two pages.

12 CHAIRPERSON REID: And we will mark it Exhibit

13 A.

14 MR. GELL: You have two exhibits, I think. One

15 from Mr. Sher and one from us.

16 MR. SHER: There is yet another exhibit that I

17 think the staff prepared that showed that property highlighted

18 in yellow which didn't have the right property on it.

19 CHAIRPERSON REID: Ms. King stated that it is a

20 fax from Rudnick-D.C. indicated at the top that distinguishes

21 this particular --

22 MR. GELL: That is correct.

23 CHAIRPERSON REID: The picture from the other,

24 and this is the one that we are using. We are all on the same

25 page with this?

26 MS. PRUITT: Madam Chair, this is going to be

1 part of the record and it will be logged in and have its own
2 exhibit number.

3 CHAIRPERSON REID: By exhibit number. Okay.

4 MS. PRUITT: So it will be identified. I don't
5 know where it will be --

6 CHAIRPERSON REID: Separately. Okay.

7 MR. SHER: Madam Chair and members of the
8 Board, again good morning. My name is Steven E. Sher. I am
9 the Director of Zoning Services with the Law Firm of Wilkes,
10 Artis, Hedrick and Lane with Norman N. Glasgow, Jr. We
11 represent the Appellant in this matter, 1300 First Street,
12 L.L.C.

13 What is before you is the appeal of the
14 issuance of a certificate of occupancy for the building at 33
15 New York Avenue, N.E., which is located on the south side of
16 New York Avenue between North Capitol and First Streets, N.E.
17 The certificate of occupancy was issued on March 8, 1999. The
18 C of O number is B00183471, and it allowed the use of those
19 premises, 33 New York Avenue, N.E., as a sport bar and
20 restaurant, 190 seats, "not sexually oriented". We have
21 submitted a statement of the Appellant to the Board. We filed
22 that two weeks ago, and I hope you have that in your package.
23 The application for the certificate of occupancy is marked as
24 Exhibit B of that statement, and the certificate of occupancy
25 itself is marked as Exhibit C to that statement.

26 We are here this morning challenging the

1 issuance of that statement. We believe that the Department of
2 Consumer and Regulatory Affairs acted in error in issuing that
3 certificate of occupancy, and we have a number of bases that
4 we would like to present to the Board this morning indicating
5 why that C of O was issued in error.

6 Basically, one, we believe that the use does
7 not comply with the off-street parking requirements for that
8 particular location and that particular zone. Two, we believe
9 the use does not comply with the off-street loading
10 requirements for that use in that zone. And three, we believe
11 that there are errors on the face of the certificate of
12 occupancy which render it invalid.

13 In order to hopefully try and simplify my
14 discussion of the parking and loading requirements, I would
15 like to hand to the Board two pages which summarize the
16 parking and loading requirements, and this is taken exactly
17 from the statement. It is no new information. It is just a
18 summary of what we provided before.

19 Madam Chair, I don't see anybody here from the
20 Zoning Administrator's Office, or I would hand them one too.

21 MS. PRUITT: We called them last week and sent
22 several letters. Mr. Hart is trying right now. So it was our
23 understanding that somebody was going to be here.

24 CHAIRPERSON REID: That being the case, Ms.
25 Pruitt-Williams, do you recommend that we continue without a
26 representation from the Zoning Administrator's Office?

1 MS. PRUITT: That is --

2 CHAIRPERSON REID: Mr. Bergstein --

3 MS. PRUITT: They can choose not to defend it.

4 MR. BERGSTEIN: They are not here. They
5 proceed at their own risk by not being here.

6 MS. PRUITT: They have been more than
7 adequately notified.

8 MR. SHER: Okay. Let me then go to the
9 substance of our arguments. With respect to the off-street
10 parking requirements, the first page of the sheet that I just
11 handed you. The zoning regulations specify that for a
12 building built before the effective date of the zoning
13 regulations, May 12, 1958, when the use of the building is
14 changed, parking is required to the extent that the new use
15 requires more parking spaces than the previous use. That is
16 in Section 2100.4 of the regulations, and I have provided that
17 section in its entirety under Tab D of our statement. So the
18 exact language is there for you to see.

19 This is a building that was built prior to May
20 12, 1958. From the certificate of occupancy application,
21 again Exhibit B to the statement, the previous use of this
22 premises was for offices. The proposed use is a sports bar
23 and restaurant 190 seats. The square feet occupied, 18,000
24 square feet. And that is taken from, again, the C of O
25 application, line 12, proposed occupancy load, 190 persons,
26 square feet occupied, 18,000.

1 Under the parking requirements of the zoning
2 regulations for a C-3-C district, office use requires one
3 parking space for each 1800 square feet in excess of 2,000
4 square feet. Again, I have provided the exact language of the
5 regulations under our Tab E, the schedule of parking
6 requirements. Retail requires parking spaces at the rate of
7 one space for each 750 square feet in excess of 3,000 square
8 feet. So for an 18,000 square foot building, the office
9 requires 9 spaces, 18,000 minus 2,000 divided by 1800 equals
10 8.89 or rounded up to 9. The retail requirement, the
11 requirement applicable to a restaurant is 20 spaces. 18,000
12 minus 3,000 divided by 750 equals 20 spaces. The difference,
13 therefore, that the restaurant requires more than what the
14 office required is 11 spaces. 20 required for the
15 retail/restaurant, 9 required for the office, and the
16 difference is 11. In other words, this use, while it was not
17 required to provide any parking when it was an office
18 building, now is required to provide 11 spaces when the use is
19 changed to a restaurant.

20 By observation, there is parking on the New
21 York Avenue and N Street sides of the building, and there are
22 photographs of the building. They are attached as our exhibit
23 under Tab I, and you can see striped spaces to park on both
24 the N Street and New York Avenue sides of the building, but
25 that parking is in public space. The building comes all the
26 way to the lot line and therefore that parking cannot be

1 counted to meet the requirements of the zoning regulations.
2 There is no off-street parking currently provided on that
3 outside area of the lot. If you look at the second photograph
4 or the second page of photographs under Tab I, there is a
5 photograph of that open area. It is gated. It is not
6 striped. It is not lined. It is not even suitable for
7 parking if you look at the way the pad sits in that lot. This
8 photograph was taken on March 15. I have a photograph that I
9 took two days ago and the condition hasn't changed any. There
10 is no parking provided on the outside area of that lot. There
11 was no parking provided -- there was no indication when the
12 certificate of occupancy application was filed and approved by
13 the District that they inquired as to whether parking was
14 required. There is no information attached to the C of O
15 application or on record in the Department of Consumer and
16 Regulatory Affairs indicating that they asked whether parking
17 was to be provided or that parking was to be provided.

18 As a consequence, this building which is to
19 provide 11 off-street parking spaces doesn't appear to have
20 any, and we believe that that is an error on the part of the
21 District in approving the certificate of occupancy application
22 for a restaurant use on this premises.

23 The second argument, and it is a similar
24 argument, relates to the off-street loading requirements.
25 That is the second page of the two that I just handed you.
26 Again, a building built before the effective date when the use

1 of that building is changed, loading is required to the extent
2 that the new use requires more loading berths than the
3 previous use. And again, I have attached that section,
4 2200.4, to our statement. It is under -- let me get the right
5 tab here -- it is under Tab K to the statement -- I am sorry,
6 it is under Tab J, which is the authority, and then Tab K is
7 the actual schedule of loading berths.

8 If you look at the schedule of loading berths
9 in 2201.1, office use requires 1 30-foot deep berth and one
10 service delivery loading space for a building with between
11 30,000 and 100,000 square feet. This building is less than
12 30,000 square feet. So office use required no loading berth
13 or service delivery space. Retail or service establishment
14 with between 8,000 and 20,000 square feet requires one 30-foot
15 berth and a service delivery space. So for our 18,000 square
16 foot building, again, the office requires no loading berth but
17 retail requires one and one service delivery space. The
18 difference is that one berth and one service delivery space.
19 There is no loading indicated as being provided anywhere on
20 the outside of the building. There is a roll-up door on the N
21 Street side of the building. I have no idea what goes on
22 inside the building. There is no information provided in the
23 certificate of occupancy application indicating in any way
24 that loading is provided which meets the requirements of the
25 regulations -- a 30-foot wide berth and a service delivery
26 loading space.

1 So in that respect, we believe that the
2 District erred in issuing a certificate of occupancy without
3 requiring loading as provided for in Chapter 22.

4 In addition to that, we believe that the
5 certificate of occupancy is invalid on its face for two
6 reasons. Number one, the certificate of occupancy application
7 -- and again, that is under Tab B -- lists the property as
8 being Lot 27 in Square 617. The certificate of occupancy
9 issued is for Lot 27 in Square 617. Unfortunately, this isn't
10 square 617. It is Square 671. So on its face, the C of O is
11 invalid. Beyond that, the certificate of occupancy
12 application indicates that the property is located in a CM-1
13 zone. The certificate of occupancy issued says that the
14 property is located in a CM-1 zone. That is curious in and of
15 itself because the property has never been in a CM-1 zone.
16 From 1958 until 1997, the property was in a CM-3 zone. If you
17 look at the zoning map under Tab L, it shows the property.
18 And again, we have drawn an arrow to the subject square
19 showing that the property is in a CM-3 or was in a CM-3 zone.
20 By Order No. 821 dated August 4, 1997, effective September 26,
21 1997 -- and that is under Tab M of our statement -- the Zoning
22 Commission rezoned this property to C-3-C. So at the time the
23 certificate of occupancy application was filed and at the time
24 the certificate of occupancy was issued, the property was not
25 zoned CM-1, nor was it zoned CM-3. It was zoned C-3-C, and
26 had been so for about a year and a half. The

1 District erred in issuing a certificate of occupancy based on
2 the wrong zone and applied -- I don't know what parking and
3 loading standards they applied, but they clearly didn't apply
4 the correct ones. Because they didn't know what the correct
5 zoning was for the property. It is, therefore, our view that
6 the Department of Consumer and Regulatory Affairs erred in
7 issuing the certificate of occupancy, that the certificate of
8 occupancy should be revoked, and that the Department should be
9 directed not to issue a new certificate of occupancy until the
10 applicant, therefore, can demonstrate that they meet all of
11 the requirements of the zoning regulations, including both
12 off-street parking and off-street loading.

13 CHAIRPERSON REID: Thank you.

14 MS. KING: I have no questions. Mr. Sher's
15 argument seems very clear to me.

16 CHAIRPERSON REID: All right.

17 MR. BERGSTEIN: Could I ask Mr. Sher a
18 question?

19 CHAIRPERSON REID: Yes.

20 MR. BERGSTEIN: Could I look at Section 2100?

21 CHAIRPERSON REID: What tab is that, Mr. Sher?

22 MR. SHER: It is Tab D, I believe.

23 MR. BERGSTEIN: And I am looking at -- this
24 building was constructed before 1958?

25 MR. SHER: That is correct.

26 MR. BERGSTEIN: You are presuming that Section

1 2100.4 applies to buildings constructed before 1958. And I
2 just would like to hear why you believe that that is true. I
3 am not saying that it is one way or the other. But when I was
4 looking at this section, I was also looking at Section 2100.6
5 and 2100.7, which deal very specifically with changes in
6 intensity of use of buildings constructed before 1958. And
7 the section 2100.4 doesn't call out buildings constructed
8 before 1958, and also speaks of required uses -- speaks to
9 required uses. So I would be interested in knowing why you
10 believe that that section does apply to buildings constructed
11 before May 12, 1958.

12 MR. SHER: Well, I'll answer that in two ways.
13 Number one, it doesn't say that it doesn't apply to a building
14 built before or after 1958, so I believe it is intended to
15 apply to all buildings, number one. Number two, it has been
16 my experience in almost 30 years of practicing at this stuff
17 that that section has been applied to all buildings, both
18 those built before and after. So that you are not required to
19 provide parking for a building built before 1958 if you don't
20 change the use. When you do change -- and that, I believe,
21 comes out of 2100.1, which says all buildings and structures
22 erected after May 12, 1958 shall be provided with parking.
23 2100.4 says when you change the use of the building and that
24 use requires more parking spaces. So there are circumstances
25 where you change the use and you don't have to provide
26 parking. If I change the use from office to a use which

1 required less parking, I am not required to provide any. If I
2 changed it to a use which required the same number of parking
3 spaces, I am not required to provide any. However, when I
4 change it to a use which requires more parking, then I have to
5 provide the difference between that which would have been
6 required for the office building and that which is now
7 required for my new use.

8 MS. KING: And in this argument, do you cite
9 also 2100.6 and 2100.7?

10 MR. SHER: Well, 2100.6 and 2100.7 talk about
11 changing the intensity of use rather than changing the use
12 itself. So that if I had an apartment building that had 100
13 units and I reconfigured that apartment building so that I had
14 150 units -- I haven't changed the square footage of the
15 building, but I have changed the number of units in the
16 building and the number of units is the indicator for the
17 number of required parking spaces.

18 MS. KING: So this change from an office use to
19 a sports bar use is changing the seating capacity in 2100.6
20 and the intensity of use in 2100.7.

21 MR. SHER:
22 Well, the only reason I wouldn't say it changes the intensity
23 of use is that for parking purposes, the indicator of the
24 number of spaces is the square footage. The square footage of
25 the building doesn't change going from office to retail. So
26 in that respect --

MS. KING: But the seating capacity in 2100.6.

1 MR. SHER: Well in office, there was no
2 indication of seating capacity. So I don't know how many
3 people worked in the building.

4 MS. KING: Okay.

5 MR. SHER: The indicator for parking is square
6 footage. That didn't change. So I wouldn't say that the
7 intensity of the building changed, whereas I might if it had
8 been the number of apartment units in the building. But in
9 this case, the use itself changed. It changed from office to
10 restaurant. And that, I believe, is covered not by 2100.6 and
11 2100.7, but by 2100.4. Frankly, if the Board were to rule
12 somehow that no parking at all is ever required for a building
13 built before 1958, 99 percent of the time I would stand up and
14 applaud. Because that works to my benefit and my clients'
15 benefits almost all the time. That is not the way the
16 regulations have ever been read before. I don't even think
17 that Mr. Gell would argue that he is out of that issue. But
18 if the Board wants to go there, please do so.

19 CHAIRPERSON REID: Okay. Any other questions?

20 MR. BERGSTEIN: No, that is the only question I
21 had of Mr. Sher.

22 CHAIRPERSON REID: All right. No word from the
23 ZA's office?

24 MS. PRUITT: Yes. Staff did call and spoke to
25 Ms. Dennis, and she remembered the call and they are not
26 sending anybody.

1 MS. KING: I can't hear you, Ms. Pruitt-
2 Williams.
3 MS. PRUITT: Staff called and spoke with Mrs.
4 Dennis. They are aware of the case and they were aware of the
5 calls and that we had called them several times, but they are
6 not sending a representative.
7 MS. KING: Okay.
8 CHAIRPERSON REID: Okay. The owner or operator
9 of the property?
10 MR. GELL: I am sorry, did you call me?
11 CHAIRPERSON REID: Yes, the owner or operator?
12 MS. PRUITT: Mr. Gell is representing the
13 owner.
14 CHAIRPERSON REID: Okay.
15 MR. GELL: Madam Chair and members of the
16 Board, my name is Steven Gell and I am representing the lessee
17 of the property. With me -- behind me is Mr. Robert Bell, who
18 is the lessee, and his partner, Mr. Richard Merritt. And
19 seated next to me is Ms. Gladys Hicks, who is the former
20 Deputy Zoning Administrator. I would at this time ask the
21 Board to accept Ms. Hicks as an expert witness. If the Board
22 would like, I would be glad to go through her background and
23 her resume. It might actually enlighten the Board as to the
24 quite extensive background that she has in this field.
25 CHAIRPERSON REID: Just one second, please, Mr.
26 Gell. Mr. Sher, did you wish to comment on that last point?

1 MR. SHER: Madam Chair, I don't think I am in
2 any way going to stand up here and challenge Ms. Hicks'
3 knowledge of the zoning regulations as probably second to mine
4 in the District of Columbia. However, Ms. Hicks was in the
5 Zoning Administrator's Office for many years. She was the
6 acting zoning administrator until I am not exactly sure when
7 and was the Deputy Zoning Administrator. Before she left the
8 District Government, she was in the Department of Consumer and
9 Regulatory Affairs at the time that this certificate of
10 occupancy application was considered by the Government. I
11 don't know what role or whatever Ms. Hicks may have had in
12 that consideration, but I've got some real problems with her
13 appearing as an expert witness on behalf of someone who is now
14 challenging the decision made by that same department.

15 MS. KING: Is it true, Ms. Hicks, that you were
16 employed at DCRA in the Zoning Administration when this
17 certificate of occupancy was considered?

18 MS. HICKS: I have been employed -- well, I was
19 employed with the Department of Consumer and Regulatory
20 Affairs Building and Land Regulation Administration and Zoning
21 Division from January 18, 1982 until July 18, 1999.

22 MS. KING: Oh, so just a few days ago.

23 MR. GELL: Yes. She retired, I think, from the
24 second --

25 MS. HICKS: It was effective June 18 -- on June
26 18.

1 MS. KING: And what is the date of the
2 certificate of occupancy?

3 MR. SHER: March 8, 1999.

4 MR. GELL: Ms. King, may I comment on this,
5 please?

6 CHAIRPERSON REID: Just wait one second. I
7 need to get a reading as to whether or not -- does it matter
8 whether or not whether she was actively involved directly in
9 this particular proceeding or this particular certificate of
10 occupancy, or by virtue of the fact that she was employed
11 there, would that render her not able to participate in this
12 particular case.

13 MR. BERGSTEIN: Let me ask Mr. Sher a question.
14 Your objection does not really go to her qualifications as an
15 expert but to the weight that the Board should accept her
16 testimony given the fact that she was an employee of the
17 agency at the time that the certificate was issued. There are
18 experts who do testify who are employees of in fact the same
19 party who is a party in the case. That doesn't disqualify
20 them from being an expert. It goes to the weight that is
21 given their testimony.

22 MR. SHER: I think I have an objection that
23 goes beyond that. As a -- well, she was an employee of the
24 Department of a ruling that she now seeks to challenge, and
25 she was in the Department at the time that that ruling was
26 made and arguably has some responsibility for the

1 administration of the zoning regulations. I don't know to
2 what extent she may have contributed to the ruling or not.
3 All applications for certificates of occupancy and building
4 permits go through the Zoning Administrator's office and are
5 ruled upon by employees of that office, including the Deputy
6 Zoning Administrator and the still acting Zoning
7 Administrator, Mr. Lorenko. I just don't --

8 CHAIRPERSON REID: Why don't we get
9 clarification from Mrs. Hicks. Were you directly involved in
10 this particular certificate of occupancy to your recollection?

11 MS. HICKS: I am positive that I was not
12 involved. The street address is not familiar.

13 CHAIRPERSON REID: Directly.

14 MS. HICKS: Directly or indirectly.

15 MS. KING: You were not supervising the people
16 who --

17 MS. KING: I was supervising, but the -- well,
18 the individuals who review the building permits and the
19 certificates of occupancy, they are not always sitting in the
20 Zoning Administrator's office. They are in the permits
21 division where permits are processed.

22 CHAIRPERSON REID: So to your recollection, you
23 don't have any knowledge of this particular application for a
24 certificate of occupancy?

25 MS. HICKS: No, I do not.

26 CHAIRPERSON REID: Mr. Gell?

1 MR. GELL: Ms. Reid, in fact I was concerned
2 about this when I first talked to Ms. Hicks, because I am
3 fully aware of the federal law that says that a person who
4 leaves Federal or District employment cannot testify ever on
5 something in which they were personally and substantially
6 involved. And for I think it is one -- perhaps that is two
7 years now, I think -- on matters that were under their
8 jurisdiction. So we went into the question into whether the
9 people who made the decision -- and I think Mr. Toa Bello
10 actually signed the application -- was reporting to her with
11 respect to these matters. And apparently on this, that was
12 not the case. Mr. Armondo Lorenko at that time was the acting
13 Zoning Administrator. And Ms. Hicks, while she had the title
14 of Deputy, she had some very special duties that did not
15 involve this matter. So it was our judgment that in fact she
16 had not violated any federal statute, nor should she be
17 disqualified on the basis that she was in the office at the
18 time. She had no personal knowledge or supervision authority.

19 MS. KING: If she has no knowledge of this,
20 what is she going to testify to?

21 MR. GELL: I have asked Ms. Hicks to testify as
22 to the practice in the office on how these calculations are
23 made. I think it is crucial to the Board to find out what the
24 history is on how you make the calculation of how much parking
25 is needed. Our view is very different from Mr. Sher's as to
26 the proper way to make the calculation. She has also, as an

1 expert, viewed the site and has some comments to make about
2 the site itself and how it complies with the zoning code. So
3 I would be happy to present her testimony.

4 MR. SHER: I don't really want to drag this
5 out, Madam Chair, but I have a serious objection to the Board
6 accepting the testimony of Mrs. Hicks. I just don't see how
7 someone who was responsible for supervising that office and
8 who for a significant period of time was the acting Zoning
9 Administrator for the District of Columbia and who had the
10 ultimate responsibility to interpret and apply the
11 regulations, who supervised among others Mr. Bello, who was
12 the person who actually ruled upon the C of O or who signed
13 off on the C of O application can now turn around and appear
14 and challenge a certificate of occupancy issued while she was
15 still an employee of that office. That is up to the Board to
16 decide.

17 MS. KING: I agree with Mr. Sher.

18 MR. PARSONS: I agree with Mr. Sher completely.

19 MR. GELL: May I?

20 CHAIRPERSON REID: Okay.

21 MR. GELL: Ms. Hicks is not challenging the
22 certificate of occupancy. She is, in fact, supporting the
23 certificate of occupancy. Mr. Bello or nobody from the Office
24 of Zoning is here to provide testimony. There is not -- Mr.
25 Sher has not pointed to any violation of federal law or any
26 case that says she cannot appear or anything other than his

1 own feeling that she can't be an expert witness on this case.
2 And I would respectfully submit to the Board that that has
3 never been the test of whether somebody could come back as an
4 expert witness and testify. There is a very precise law on
5 the subject.

6 MR. PARSONS: I cannot construe this as
7 anything more than her defending herself. She should be up
8 here on the other side. She is going to be defending a
9 decision that was made by her staff while she had jurisdiction
10 over it.

11 MS. KING: I completely concur.

12 MR. PARSONS: And I just don't think we should
13 proceed.

14 MS. KING: I agree.

15 CHAIRPERSON REID: Okay. I think that basically
16 it is the feeling of the Board that it would not be -- while
17 it may be legally appropriate, from an ethical aspect it
18 perhaps would not be --

19 MS. KING: I am not sure that that is true
20 either.

21 CHAIRPERSON REID: What I was saying, Ms. King,
22 is that I am not sure. And as such, rather than to -- if we
23 are going to err, I am going to err on the side of caution in
24 this regard. That does not preclude you from being able to
25 use or the applicants to be able to give us the information
26 that is needed in order to make your case. But I think that

1 the idea of Mrs. Hicks testifying here today is not going to
2 set well with this Board. So you will have to proceed without
3 her as an expert witness. And understand that it is a call
4 that we are making, which is basically our gut feeling as to
5 which way to proceed with this.

6 MR. BERGSTEIN: I am just thinking out loud, I
7 guess. But if he is calling her -- first of all, I am not
8 even sure it is expert testimony. There are two things the
9 proffer has been about. One is what the procedures were at
10 the Office of Zoning at that time. And second, I guess, an
11 opinion with respect to interpretation of zoning procedures.
12 The first part of that, which is purely factual, I don't know
13 -- the Board may want to consider whether or not, since Ms.
14 Hicks was an employee at that time, why she could not be
15 called as a fact witness just to state her recollection of
16 what that procedure was. The rest of the issues, the expert
17 issues, the Board may consider in another aspect. But if
18 someone is a past employee and a party simply wants to know
19 what the practices were at that time and what her observations
20 were, I would think that anybody could call Ms. Hicks in that
21 capacity. The expert issue is I think something else. But,
22 Mr. Sher, I don't know if you want to respond to that. It
23 seems to me that a party has a right to call either a past
24 employee or a future employee if they want to illuminate an
25 observed process as opposed to giving opinions on that
26 process.

1 MR. SHER: Well, I think it is pretty clear
2 that Mr. Gell, on behalf of the operator of the business, is
3 calling Ms. Hicks in an attempt to argue against the appeal
4 and in support of the decision of the Zoning Administrator. I
5 just don't think that you can take her as an independent
6 expert having, you know, vast experience in the area, which I
7 don't quibble with. Obviously, she was in the office for a
8 lot of years. If she doesn't have a lot of knowledge, she
9 shouldn't have been there. And I am not going to argue that.
10 But I just don't think under the law -- and I don't have -- I
11 was not prepared for Ms. Hicks this morning and I don't have
12 that section of the law with me. Mr. Gell alluded to it, and
13 I almost think he said it himself. That while she may not --
14 if she was personally and substantially involved in a matter -
15 - and believe me, I know that law very well because I have had
16 to deal with it for as long as I have been outside this
17 government. You cannot ever come back before the Government
18 on behalf of a private party, no matter how long it takes.
19 There is another provision of the law, and I think Mr. Gell
20 alluded to it, that says for some period of time, and I
21 thought it was one year at the time that I left the
22 Government, but since that was thousands of years ago it may
23 have changed some, that if there was something in the office
24 that I was not personally and substantially involved with but
25 was still pending under the official responsibilities of the
26 office that I supervised, I could not participate in that

1 matter on behalf of another private party either. That period
2 of time has long since past, but I have always -- I mean, you
3 have never seen me down here on a matter that somehow had any
4 bearing on something that was there while I was here. I just
5 don't see how Ms. Hicks can appear before you this morning,
6 expert or non-expert, to illuminate or not illuminate, if she
7 is appearing as
8 -- I will call it loosely an advocate or on behalf of a
9 private party in a matter involving the District Government.
10 I am not the lawyer around here but --

11 MS. KING: That was a case that was under her
12 supervision when it was decided.

13 MR. BERGSTEIN: That is a separate issue.

14 MS. KING: I totally agree with Mr. Sher. As a
15 former government employee myself I know I followed this
16 question of what you can and can't do. I think it is clear.

17 MR. GELL: Well, Ms. King and Ms. Reid, if I
18 may, the case was not under her official supervision.
19 Therefore, she does not violate the law. I know Mr. Sher
20 would be the first to admit that he is not an attorney and
21 doesn't want to make legal judgments. In fact, he doesn't
22 even have the language in front of him. I would be happy to
23 make that available. I am willing to put Ms. Hicks on as
24 somebody who has knowledge about the way interpretations were
25 made. If I had --

26 MS. KING: Excuse me, Mr. Gell. Are you arguing

1 that she was not the eventual supervisor of the person who
2 issued this certificate of occupancy?

3 MR. GELL: What I am saying is the language
4 doesn't say that.

5 MS. KING: I want -- was she --

6 MR. GELL: But that is not what the language
7 says.

8 MS. KING: Was she in the line of command? Was
9 she superior to and had control over the section that gave the
10 certificate of occupancy?

11 MR. GELL: In a normal situation, one would
12 assume that the second person in the office would have
13 supervision over the people under her. That is a reasonable
14 assumption. That is not the way the office operated. And in
15 fact there was direct communication and direct line of
16 authority between Mr. Lorenko and Mr. Bello on this case and
17 on many other cases as well. Simply because she was named
18 Deputy did not mean that she would be responsible for
19 everything that happened with regard to the people under her.
20 And I would just add one more thing. Had I subpoenaed a
21 member of the office now to come and give testimony along
22 these lines, I think you would probably accept their
23 testimony. And if you can consider Ms. Hicks as somebody who
24 has knowledge, who I subpoenaed instead of asked to be an
25 expert, I would present her testimony in that light and not
26 ask her to give her expert testimony. Failing that, if you

1 would give me some additional time to bring somebody else
2 before you instead of Ms. Hicks, I would be grateful for that
3 as well. But I think her testimony can illuminate, and I
4 think Mr. Bergstein is absolutely right. You can learn a
5 great deal from her understanding about how these things were
6 handled in the office.

7 CHAIRPERSON REID: I think, Mr. Gell, that
8 basically what we are talking about here is a comfort level.
9 It appears that this Board is not comfortable with Mrs. Hicks
10 testifying today. However, are you saying that you would like
11 to ask for a postponement or a continuance to have someone to
12 step into her shoes in that position to give some expert
13 testimony as to how the DCRA or the Zoning Administrator's
14 office operates?

15 MR. GELL: If somebody were here from the
16 office, they could answer a lot of these questions without Ms.
17 Hicks. But they are not here.

18 CHAIRPERSON REID: Do you feel that that
19 information is so pertinent that you would not want to
20 continue today with Mrs. Hicks?

21 MR. GELL: Oh, it is absolutely central to the
22 case. I mean, Mr. Sher is absolutely wrong about how these
23 calculations are made. You have a different -- you have a
24 change in the zone and the calculations are always made based
25 on the previous zone. If you make your calculations based on
26 that, they have credits for 20 parking spaces -- 20 parking

1 spaces that they can now use. And all that Mr. Sher is saying
2 is that 20 parking spaces were needed --

3 CHAIRPERSON REID: You don't think that you
4 could adequately proffer to us the necessary information to
5 counter what Mr. Sher has presented to us this morning?

6 MR. GELL: I think I would have to present it
7 in a different way if I were to do that. I would rather have
8 some time to prepare that.

9 MS. KING: What about the defect of the zone
10 being C-3-C and the Lot number not being correct on there?

11 MR. GELL: What Mr. Sher -- I am sorry, I
12 didn't mean to interrupt.

13 MS. KING: Not being correct on the C of O.

14 MR. GELL: Mr. Sher is absolutely right. A
15 mistake was made on the Square number. It should be 671, not
16 617. A mistake was made on the CM-3. It was copied --
17 actually, it wasn't put on the application. It was copied
18 from a previous C of O that was apparently in the computer.
19 We can show you one that was issued in 1997, in which
20 apparently the CM-1 was put on.

21 CHAIRPERSON REID: Okay. Mr. Gell,
22 notwithstanding the information that Mrs. Hicks would have
23 testified to this morning, would not the insufficiency in the
24 zoning and in the square within itself render the C of O
25 invalid?

26 MR. GELL: I don't believe so. Because I think

1 that it could be shown through testimony that, in fact, in
2 either case the appropriate amount of parking was being
3 supplied. There was one other mistake that I would mention.

4 CHAIRPERSON REID: Mr. Gell, how is that
5 possible when you are talking about an entirely different lot.

6 MR. GELL: It is not a different lot. It is a
7 different square.

8 CHAIRPERSON REID: The C of O was issued for an
9 entirely different lot.

10 MR. GELL: The address was correct. The square
11 number was incorrect.

12 CHAIRPERSON REID: And the zoning was
13 incorrect.

14 MR. GELL: Yes. There is another mistake,
15 which is perhaps most important of all, and that is that the
16 building on this lot was listed as having 18,000 square feet,
17 when in fact it has much less than 14,000 square feet. We
18 were prepared to offer testimony to show that based on an
19 actually 13,500 square foot building, that even under Mr.
20 Sher's calculations, there would be sufficient parking. I
21 will present that now or later or at some time. But I would
22 like the opportunity to present it --

23 MS. KING: The application which presumably was
24 filled out by the applicant says 18,000 square feet.

25 MR. GELL: Yes, it does. And unfortunately the
26 gentleman who filled that out and submitted it and obtained

1 the C of O died a few weeks ago. I can't ask him why he --
2 where he got that number, but it was a mistake. I have some
3 additional testimony that doesn't depend on Ms. Hicks to
4 verify that.

5 CHAIRPERSON REID: Mr. Parsons, you had a
6 comment?

7 MR. PARSONS: Mr. Gell has asked for time to
8 prepare and I think we ought to postpone.

9 CHAIRPERSON REID: Mr. Gell, that would occur
10 to me to probably be the best way to go at this point.

11 (Whereupon, at 10:45 a.m. off the record until
12 10:47 a.m.)

13 CHAIRPERSON REID: Mr. Sher and Mr. Gell, we
14 just conferred in a private conversation, but I would want to
15 make it clear on the record. Corporation Counsel has advised
16 us that there should not be a problem with Mrs. Hicks
17 testifying as a former government employee.

18 MR. BERGSTEIN: What I am concerned about --
19 let me just stay what I am concerned about. The Government
20 does use past employees as fact witnesses. The Government
21 would never be able to defend an action if we could not use
22 past employees as fact witnesses. But I am not as familiar
23 with the law that Mr. Sher is referring to as I would like to
24 be. What I am concerned about is if Mr. Gell wants to -- as
25 an intervener wants to present testimony as to the processes
26 that took place at that time, he should be given the

1 opportunity to present it. If it is purely factual and purely
2 observation, that is one thing. Not crossing the line into
3 opinion testimony, which may be Mr. Sher's issue. And maybe
4 Mr. Gell needs to make a proffer about what he is proposing to
5 do. Either that or allow Mr. Gell an opportunity to bring
6 someone in from DCRA who was an employee at that time that
7 could testify what the processes were. I am concerned about
8 crossing that line between fact and opinion. But I think the
9 intervener should have an opportunity if he believes those
10 facts are relevant to be able to present those facts to the
11 Board.

12 MR. PARSONS: What facts could be relevant
13 here? I don't think she should be testifying on any aspect of
14 this case that was decided while she was there. If she wants
15 to tell us how they calculate C-3-C parking in general -- if
16 that is what you are concerned about, fine. But it doesn't
17 really have any application to this case. In other words, in
18 order to be pertinent, she would have to say in this case,
19 here is the way it was done. I don't see the relationship
20 between the Government calling witnesses to defend itself and
21 this occurrence here. I don't get it. Certainly if we wanted
22 to call Ms. Hicks or the Zoning Administrator did to come back
23 to testify as to what she was doing while she was in the
24 office on March 8, fine. But this is not the case.

25 MR. BERGSTEIN: I will defer to the Board's
26 judgment on this.

1 CHAIRPERSON REID: Let's bring some closure to
2 this. We are kind of beating this to death. Mr. Gell, go
3 ahead.

4 MR. GELL: I was simply going to respond to Mr.
5 Parsons. It would seem to me that in trying to determine what
6 is the correct way to interpret these things, it might be
7 useful to know how the office has operated in the past over
8 many, many case, many, many years. That, I thought, was a
9 factual piece of information that was of use to the Board and
10 where Mrs. Hicks could be, perhaps without peer, the right
11 person to be giving it. But I will yield to the Board's
12 judgment on that.

13 MR. PARSONS: So she is not going to talk about
14 this case?

15 MR. GELL: I can certainly ask her the general
16 question of how these kinds of calculations are made.

17 CHAIRPERSON REID: If it's only on factual
18 matters pertaining to procedures, and not getting into the
19 merits of this case or the essence of this case, then I have
20 no problem with it as long as the other Board members do not.

21 MR. GELL: But I would still appreciate a
22 postponement because of many of the other issues that might
23 come up ought to be given to the Board through an expert or
24 through some other kinds of evidence.

25 CHAIRPERSON REID: So you still need a
26 postponement?

1 MR. GELL: I would ask for a postponement, if I
2 could.

3 CHAIRPERSON REID: Mr. Sher, do you have any
4 objection to a postponement? Under the circumstances in that
5 he did not anticipate that you were going to object to him
6 having Mrs. Hicks here, that is just an accommodation.

7 MR. SHER: I have an objection in principle,
8 but I think Mr. Gell has conceded that the very basis of the
9 application on which the certificate of occupancy was issued
10 were erroneous. I don't know how that changes by a
11 postponement. So in my mind, if he is going to present
12 evidence that says the building isn't 18,000 square feet, then
13 I don't think that is relevant to a certificate of occupancy
14 that was based upon that information provided by his client's
15 agent. I am sorry the man can't be here to say why he put
16 that down either. But if the District relied upon that
17 application or relied upon that information and issued the C
18 of O, I don't see how that is going to change any between now
19 and whatever other time we reconvene here. So in my mind, the
20 certificate of occupancy should be revoked. It is clearly --
21 it was issued on the basis of incorrect information. Mr. Gell
22 has conceded that. The C of O should be revoked and the use
23 should not be allowed to go forward. If Mr. Gell's client
24 wants to submit a new application based on different
25 information, I may be back here in six months. If he has got
26 information that shows that under the way I would think the

1 zoning regulation should be interpreted that he has got enough
2 parking, then maybe I won't be back here in six months. But I
3 think it is clear on the basis of what it before the Board
4 today that that C of O was issued in error by the Department
5 of Consumer and Regulatory Affairs and it should be revoked.

6 CHAIRPERSON REID: Okay. Thank you very much,
7 Mr. Sher. Nonetheless, we have yet to hear -- in all
8 fairness, we have not heard from the other side. So that
9 being the case, I have no problems with a postponement. Board
10 members? Ms. King?

11 MS. KING: No problem.

12 CHAIRPERSON REID: All right. A date certain,
13 please?

14 MS. PRUITT: We can postpone it to October 6.

15 CHAIRPERSON REID: Okay. Then at that time,
16 Mr. Gell, I would think that it would be prudent of you to at
17 that time proffer another expert witness, in that it appears
18 there is a problem with Mrs. Hicks testifying in this case.

19 MR. GELL: I gather that the Board would be
20 willing to hear Mrs. Hicks on the factual matters but not on -
21 -

22 CHAIRPERSON REID: On the factual matters. But
23 you need -- by your own admission, you are saying that you
24 need to have an expert witness to assist you with getting to
25 the merits of the case.

26 MR. GELL: I have to rethink that. I may or

1 may not. I may be able to provide some additional evidentiary
2 materials that wouldn't require an expert. MS.

3 KING: But you also need to bear in mind that you have to deal
4 with the question of the erroneous application. The C of O is
5 based on an erroneous application. It is for the wrong lot and
6 the wrong zone.

7 CHAIRPERSON REID: And now we find for the
8 wrong square footage.

9 MS. KING: And for the wrong square footage.

10 MR. GELL: And that may be another avenue to
11 reapply.

12 MS. KING: You may want to consider going back
13 and reapplying for a C of O with all the proper information.

14 MR. SHER: Madam Chair, can I make two
15 requests, please? The delay, if there is one -- since the
16 prejudice in the delay works to my client, the Appellant, I
17 would like to ask two things. Number one, I don't know
18 whether this business is actually operating or not. The times
19 that I have been out there, it has been locked and not
20 operating. I would like to ask that the Board order that the
21 status quo be preserved. In other words, if they are not
22 operating that they not be permitted to operate. If they
23 don't have a restaurant license that a restaurant license not
24 be issued until the question of the appeal be resolved. They
25 don't, I believe, have an ABC license. I don't think they
26 should be allowed to get an ABC license. Of course, you can't

1 get an ABC license unless you've got a restaurant license.
2 You can't get a restaurant license unless you have a valid C
3 of O.

4 CHAIRPERSON REID: Right.

5 MR. SHER: We are raising a fundamental
6 challenge to that, and I would just ask that the Board order
7 the Department of Consumer and Regulatory Affairs to preserve
8 the status quo. I think that is fair to them and us.

9 CHAIRPERSON REID: I don't know if that is
10 within our purview to make such a directive. Is it, Mr.
11 Bergstein?

12 MR. BERGSTEIN: In terms of the C of O -- and
13 maybe Mr. Sher can illuminate that question because I think it
14 is a valid concern -- you have before you a C of O that at
15 least the intervener has agreed is defective in certain
16 respects. This case is being continued because of the need to
17 provide another expert as I understand it, although Mr. Gell
18 didn't notice to anybody that he had an expert to proffer.
19 And maybe Mr. Sher can speak -- this is the jurisdiction of
20 the Board -- to basically stay the implementation of a C of O.
21 I don't think this BZA can order the DCRA not to issue a
22 restaurant license or to order the ABC board not to issue a
23 liquor license. The only question is whether or not the C of
24 O could be considered at this point to have been stayed in
25 terms of the ability to --

26 MR. SHER: As Mr. Gell pointed out and as the

1 Board well knows, I am not an attorney. I am not prepared to
2 argue the matter of law. But I just don't -- I think it works
3 to the prejudice of my client if in fact you continue this
4 case and he is allowed to go about doing whatever it is that
5 he is doing.

6 MR. BERGSTEIN: Mr. Gell, if you are granted a
7 continuance, would you represent your client won't operate
8 this establishment until this issue is resolved in October?

9 MR. GELL: No, I would not because in fact it
10 is operating. Mr. Bell would stand to lose an enormous amount
11 of money if he were forced to stop operating or forced to stop
12 --

13 MS. KING: You have a restaurant license and an
14 ABC license?

15 MR. GELL: I understand it is a restaurant
16 license. No an ABC license. But he is operating a restaurant
17 under a valid license.

18 CHAIRPERSON REID: Well, I thought I understood
19 Mr. Sher to say the status quo as to if it is not operating,
20 it will not open. But if it is operating, it will remain --

21 MR. SHER: I don't know. The times I have been
22 out there, it hasn't been open. I will accept their proffer
23 that it is operating, in which case I think they can. But if
24 they don't have an ABC license, I would request that no
25 license be issued.

26 MR. GELL: We can't ask for an ABC license

1 until we have the zoning settled.

2 CHAIRPERSON REID: Okay. So in other words,
3 that solves that problem.

4 MR. SHER: That is fine. If that is the
5 understanding, then we will proceed on that.

6 MR. GELL: We can proceed before the ABC, but
7 obviously they won't grant it until we have that. I would
8 urge the Board not to bring this down on Mr. Bell. He came in
9 good faith. He got a C of O. It was issued by an agency that
10 was willing to defend it in all the discussions that I had
11 with them. And I think that he ought to be allowed to
12 continue to operate. I also think that Mrs. Hicks ought to be
13 allowed to testify. I am sorry that we can't get a return
14 date until October 6. Obviously that will do great harm to my
15 client if the Board were to impose some imposition on him that
16 he can't operate.

17 CHAIRPERSON REID: We are not going to do that,
18 Mr. Gell.

19 MR. GELL: But I was prepared to argue that
20 notwithstanding the problems with the C of O, and I admit that
21 they are there, that in any case it would have been granted.
22 That the mistakes were not that bad for the C of O. And I
23 think the Board would have accepted that, but I can't get to
24 that point until I present it.

25 CHAIRPERSON REID: Thank you.

26 MS. KING: Mr. Gell --

1 MR. SHER: Madam Chair, just one other thing.

2 MS. KING: You go ahead, Steve.

3 MR. SHER: I was going to say given that we now
4 know who all the parties are, can we ask that Mr. Gell serve
5 us with whatever it is he intends to rely upon and argue? I
6 had no idea Mrs. Hicks was going to be here this morning. I
7 would have been prepared or better prepared to have dealt with
8 that issue. But we filed and served our statement on you.
9 Prior to the October 6 hearing, if we could get whatever it is
10 so that we are all prepared and we can deal with this once and
11 for all.

12 CHAIRPERSON REID: All right, Mr. Hart can give
13 some time lines, Because that is appropriate.

14 MR. GELL: I would like to respond to that, if
15 I may. Obviously, we would be happy to -- the materials we
16 were going to submit today were not prepared until yesterday.
17 There wasn't time to give it to them. Mrs. Hicks came into
18 this case quite late in the game. But, yes, we will certainly
19 let you know.

20 MS. KING: Mr. Gell, I mean we are talking
21 about postponing this by two months and a bit. During that
22 time -- I mean, you still at the end are going to have to have
23 -- you are going to have a C of O that has to be amended
24 because it has got the wrong zoning and it has got the wrong -
25 - you know, even if the parking and loading issue -- does it
26 not behoove you to go back and apply again with the proper

1 information?

2 MR. GELL: Ms. King, I think you make a very
3 good point. We are certainly going to take that into
4 consideration. It would make a lot of sense to correct it.
5 Because we think that under the situation as it exists, that
6 the C of O would be issued quite properly. That would make a
7 lot of sense.

8 CHAIRPERSON REID: And given the fact that you
9 presented to us the inconsistencies, then going back to the
10 DCRA and pointing them out, it certainly would make a much
11 better case for you to come with the corrected C of O. Thank
12 you. Time line?

13 MS. PRUITT: If the hearing is on October 6,
14 just to make it easier for everybody -- Mr. Sher and anyone
15 else -- I would also suggest that you serve it on the ANC --
16 be served by September 22. That gives them a two-week period.

17 MS. KING: And again, could we please schedule
18 it at the beginning of the afternoon session so that I can
19 hear it?

20 MR. GELL: Thank you.

21 CHAIRPERSON REID: Mr. Hart, call the second
22 case of the day, please.

23 MR. HART: The next case is Application 16482
24 of the Catholic University of America, pursuant to 11 DCMR
25 3108.1, for a special exception under Section 210 for review
26 and further processing of its campus plan to permit the

1 interim use of the west of the Life Cycle Institute and east
2 of Curley Hall for temporary manufactured housing unit to
3 accommodate 96 students for a period not to exceed 3 years in
4 an R-5-A District at premises 620 Michigan Avenue, N.E.
5 (Square 3821, Lot 44).

6 Would those persons intending to testify,
7 please raise your right hand?

8 (WITNESSES ARE SWORN.)

9 MS. KING: Madam Chair, given that this appears
10 to be an uncontested case, perhaps Ms. Prince could just hit
11 the high points. There is no one here, I believe, in
12 opposition, and the ANC is supportive.

13 CHAIRPERSON REID: Ms. Prince, we have read the
14 record and you can stand on the record for the most part. It
15 appears to be very clear-cut, and it appears we also have
16 received a letter -- actually, we have to waive it in -- from
17 the ANC.

18 MS. PRINCE: Oh, you did receive it?

19 CHAIRPERSON REID: Yes, in support. So we will
20 waive that at the appropriate time. I had just one question
21 regarding the self-certification. It is unsigned. Do you
22 have a signed copy?

23 MS. PRINCE: Not signed by the Zoning Office.

24 CHAIRPERSON REID: Signed by the Office of the
25 Zoning Administrator.

26 MS. PRINCE: We have had a longstanding issue

1 with the Office of Zoning Administrator on whether they need
2 to sign these self-certification forms. They tell us that
3 they don't need to sign them because their signing them to
4 essentially say that they haven't read them. So they are
5 saying it is an act in futility.

6 MS. PRUITT: Madam Chair, may I shed some light
7 on this? Because I believe I spoke with Ms. Prince and Mr.
8 Lawson. It has been the staff's policy not to sign them at
9 DCRA. However, in talking with Mr. Lorenko, the Zoning
10 Administrator, it is their policy to. So the staff over there
11 has not been doing what they should be.

12 MS. PRINCE: Okay.

13 MS. PRUITT: They have been directed. Now, I
14 don't know if it has been filtering down. But this office in
15 concert with Mrs. Kress has the assessments of Mr. Noble and
16 Mr. Lorenko.

17 CHAIRPERSON REID: Mrs. Prince --

18 MS. PRINCE: We would be pleased to secure the
19 signature.

20 CHAIRPERSON REID: Secure the signature and
21 then submit it to staff and they will take care of it.

22 MS. PRUITT: But this is an ongoing problem.
23 Particularly, this was probably filed much sooner than we had
24 the meeting.

25 CHAIRPERSON REID: Because I would definitely
26 like to see any document coming from over there signed by

1 someone.

2 MS. PRUITT: Exactly.

3 CHAIRPERSON REID: To at least give us
4 something --

5 MS. PRUITT: And we are also going to revise it
6 so that at the bottom it has licensed attorney or --

7 CHAIRPERSON REID: Architect?

8 MS. PRUITT: Right. And really someone should
9 indicate if they are a licensed attorney or an architect and
10 for what jurisdiction.

11 CHAIRPERSON REID: Okay. All right.

12 MS. PRINCE: I am pleased to secure the
13 signature. I'll be very brief. I am Alison Prince of Wilkes,
14 Artis, Hedrick and Lane, here today on behalf of the Catholic
15 University of America. We are here today to seek approval of
16 26 manufactured housing units that will remain on the campus
17 for no more than three years. The reason for the housing
18 units is a happy one. There has been a very positive jump in
19 enrollment at the University after suffering a decline in the
20 mid-1990's, and there are plans underway, as we speak, to
21 construct a new dormitory. That case will be coming before
22 you in the fall. But the dormitory can't get built in time to
23 accommodate this jump in enrollment. The University remains
24 well below its cap of 7,500 students with 5,486 students, well
25 under the FAR limit of 1.8 with a .48 FAR. The University is
26 a role model to other universities in its relationship with

1 the community and the outreach that it has done to not only
2 the subject ANC but all the surrounding ANC's on this project
3 and really many other facets of the University's operation.
4 And for that reason, they have earned the ANC's support.

5 I have Sue Pervi, Vice President for
6 Administration here today. She is the one that is down in the
7 trenches with the community on a regular basis. We have very
8 detailed testimony that Sue has prepared and I can submit that
9 for the record. She can hit the highlights.

10 MS. KING: Submit it for the record.

11 MS. PRINCE: Okay. I am pleased to do that.

12 MS. KING: I would, however, like to ask a
13 question which may be in that material. This is well
14 insulated from any residential area as I see it on the map. I
15 mean, you are fortunate in that you have, unlike some of your
16 sister universities, have an enormous amount of acreage, and
17 this is not anywhere near any other -- you know, any private
18 housing.

19 MS. PERVI: That is correct. And I have an
20 ongoing planning initiative for future housing in the housing
21 cluster, and the neighborhood sat on the core master plan
22 group from its inception.

23 MS. KING: Right.

24 MS. PERVI: So what we have done is we have
25 tracked the future planning and put this -- it really borders
26 on the future housing planning. So the community, in fact,

1 was very supportive of this particular location. We had
2 brought it to the community first in terms of location and
3 they were very happy with that. It is internal, in the heart
4 of the campus.

5 CHAIRPERSON REID: Ms. Pervi, in that you have
6 taken the time to come down and submit -- to give us briefing
7 here, if you would like to say a few words and take this time
8 to give us the highlights of your submission, it is up to you.

9 MS. PERVI: That is not really necessary. I
10 think I did try to provide this detail that you could read at
11 your leisure.

12 CHAIRPERSON REID: Yes.

13 MS. PERVI: I just wanted to say that we have
14 been very pleased. We have a very good community relationship
15 and our ANCs, our surrounding community, has actually
16 participated. I invited them. They came to the site. They
17 have seen representative samples. And they're participating -
18 - just as a highlight, we have a partnership with the Brooklyn
19 Garden Club and they are going to be participating with
20 contributing to the landscaping on the site. So we have
21 really and truly kind of made this a community project in the
22 sense of our local community. We have architectural
23 professionals participating, and the students. So it is
24 actually a very exciting project for all involved.

25 CHAIRPERSON REID: To your knowledge, have you
26 had anyone opposed to your campus plan -- this extension of

1 the campus plan?

2 MS. PERVI: No. We provide regular briefings
3 to the community on a monthly basis. So what we try to do is
4 discuss -- if we think in anticipation of any issues, we try
5 to discuss that ahead of time and come up with solutions
6 before they become problems.

7 CHAIRPERSON REID: It appears that you are in
8 compliance with Subsection 210 in all aspects pertaining to
9 noise, traffic, number of students and all the other various -
10 - if you can stipulate that you are in compliance with all the
11 various sections of Subsection 210. Any questions, Board
12 members?

13 MS. KING: No. I move that we waive in the ANC
14 report.

15 MR. PARSONS: Second.

16 CHAIRPERSON REID: Okay. And basically, Ms.
17 King, did you see there -- I was trying to flip very quickly,
18 but there was a quorum.

19 MS. KING: There was a quorum. There was a
20 duly advertised meeting. There was a quorum present. They
21 voted to support. And specifically it is the view of 5-C that
22 the measure is consistent with the important goal delineated
23 in the Universities approved campus plan, that is, to provide
24 interim and long-term housing accommodations for undergraduate
25 and graduate students. Further, we see this move as
26 presenting a win/win situation for both the University as well

1 as the rest of the surrounding community. So that is a very
2 strong endorsement by the ANC.

3 CHAIRPERSON REID: They seem to be elated. All
4 right. There is no one here in opposition to. There is no
5 other persons in supporting. Closing remarks?

6 MS. PERVI: In closing, I would simply like to
7 note so that you are aware, the self-certification process is
8 really working. I was contacted by Catholic University in
9 early May. We filed this application on May 18. And with
10 your favorable action today, this entire process will have
11 been completed in three months, which I think is remarkable,
12 having never completed a campus plan related case in less than
13 six months. So we would appreciate your prompt action so that
14 these can be finalized and occupied in October.

15 MS. KING: I might just mention that it appears
16 to me that Catholic and Galludet have such a good relationship
17 and on ongoing dialogue with their neighbors, and that is one
18 reason that they don't have the problems that some of the
19 other universities have, and I applaud you for that.

20 CHAIRPERSON REID: Board members, I would move
21 approval of this application.

22 MS. KING: Second.

23 CHAIRPERSON REID: It appears that they have
24 certainly met the requirements for their campus plan under
25 Section 210. There does not seem to be any adverse impacts
26 with regard to this particular application, and it does not

1 seem to impair the intent or integrity of the zoning map or
2 plan.

3 MS. KING: Do your relations --

4 CHAIRPERSON REID: Second?

5 MS. KING: Yes, I seconded before. Do your
6 dialogue with the neighbors -- is the three years important?
7 Do you want -- do we need to put a stipulation that this is
8 for three years only?

9 MR. PERVI: I don't think -- in the community,
10 we are working on a long-range housing plan. In fact, we have
11 enrollment management. We are not interested in uncontrolled
12 growth.

13 MS. KING: No.

14 MS. PERVI: And what I have done with the
15 community is I think it is important that they understand the
16 University in a broader sense, not just when we have --

17 MS. KING: No. But what I am saying is that we
18 sometimes put conditions on our orders, and should we
19 condition this approval for a three-year period? Is that
20 comfortable for you? A four-year period?

21 MS. PERVI: If you don't need to condition it,
22 obviously that would be the most optimum.

23 MS. KING: I mean, that would mean that you
24 could have it in perpetuity, and I am not sure that that is --

25 MS. PERVI: No, that is not our intention.

26 MS. KING: Your intention or the communities intention.

1 MS. PERVI: No, that is not our intention.
2 MS. KING: So let us put a number of years on
3 it that is --
4 MS. PERVI: Comfortable.
5 MS. KING: That is within the most reasonable.
6 Five years?
7 MS. PERVI: Well, I think four. They have
8 talked about four or five years as being acceptable.
9 MS. KING: Okay, five?
10 MS. PERVI: Five would be fine. Ms. Prince, do
11 you have any comments?
12 CHAIRPERSON REID: All in favor? Aye?
13 ALL BOARD MEMBERS: Aye.
14 CHAIRPERSON REID: Opposed?
15 MS. PRUITT: Staff will record the vote as 3 to
16 0 to approve for five years. The motion made by Ms. Reid and
17 seconded by Ms. King.
18 CHAIRPERSON REID: You should have your order
19 in about two weeks, Ms. Prince.
20 MS. PERVI: Thank you very much.
21 CHAIRPERSON REID: The next case, please?
22 MR. HART: Our next case is --
23 CHAIRPERSON REID: The last case of the
24 morning.
25 MR. HART: Application No. 16474 of Steve Choi
26 on behalf of the Capital University of Integrated Medicine.

1 Pursuant to 3107.2 for a variance under Section 330.5, to use
2 the premises as administrative offices on the first and second
3 floors in an R-4 District at premises 1131 8th Street, N.E.,
4 Square 908, Lot 40. This is application 16474.

5 UNKNOWN SPEAKER: I beg your pardon. I think
6 the application number was read wrong. It is 16474 and you
7 said 72.

8 MR. HART: Those persons who are planning to
9 testify, please raise your right hand.

10 (WITNESSES ARE SWORN.)

11 MR. MERKLINGER: Madam Chair and members of the
12 Board, my name is Jim Merklinger. I am an attorney and I
13 represent Capital University of integrated medicine. We have
14 filed an application.

15 CHAIRPERSON REID: I am sorry, your name?

16 MR. MERKLINGER: Jim Merklinger.

17 CHAIRPERSON REID: Mr. Merklinger, please
18 project your voice. We don't have a sound system, so you have
19 to speak loudly.

20 MR. MERKLINGER: I am actually told I am too
21 loud a lot.

22 CHAIRPERSON REID: I can barely hear you
23 myself.

24 MR. MERKLINGER: We are filing an application
25 to use an office building, which is in an R-4 residential. It
26 is a house and we would like to use it for administrative

1 offices. It is located directly across the street from
2 Galludet University. It sits on the corner of 8th Street and
3 Florida Avenue. The building is actually -- it has been
4 approved as far as it has been kept in an professional manner.
5 We have cleaned it up. It is used for only administrative
6 purposes. What the University is -- Capital University is a
7 program for doctors in an advanced program. They don't
8 actually reside on the premises. They fly in once a month for
9 classes. So there are no students coming into the office, and
10 the classes themselves are held at Galludet in the Kellogg
11 Center. They have a really nice conference center located on
12 the campus.

13 MS. KING: I am sorry, this is continuing
14 education for doctors is what it is?

15 MR. MERKLINGER: It is more of an advanced
16 degree for doctors. It is integrative medicine. They teach
17 them what they describe as different modalities in different
18 areas of medicine so that it is built on the premise of a team
19 approach to things. There is not any one area of medicine.
20 Someone may need nutritional needs as well as a bone set.
21 Doctors learn different areas. It is expanding the medical
22 knowledge.

23 MS. KING: And the students are all M.D.'s, is
24 that correct?

25 MR. MERKLINGER: M.D. or different areas of
26 medicine, yes, they are.

1 MS. KING: Madam Chair -- and perhaps this is a
2 question for staff -- the last organization which we have been
3 dealing with which calls itself a University, we asked for its
4 master plan.

5 MS. PRUITT: No, the last one -- the National
6 Braddock University was reviewed under Section 206 not 210.

7 MR. MERKLINGER: We are not -- there is no
8 campus. This is only an administrative office. No students
9 reside here. The actual facilities are across the street.
10 That is what makes the building itself ideal. There are five
11 to six administrative staff in the building at any given time.
12 They work normal business hours, 8:00 to 5:00 p.m.

13 MS. KING: And none of the students ever come
14 in to register or anything?

15 MR. MERKLINGER: No, they are not. They
16 register via mail. There is not a walk-in area. I mean,
17 someone could walk into the building, of course, but it is not
18 set up that way. Students come from all around the country.
19 It is not something where you would just drop-in. They know
20 about the program. As I say, they are professionals. One of
21 the reasons that it is held once a month is because they have
22 practices. They are working students. So they come into the
23 area. But this is for more -- as I say, administrative and
24 keeping records. Sending out information as requested and
25 answering any needs of the university itself. It is a non-
26 profit. It has been there for just over two years. What they

1 are asking for -- and they have met with the ANC and found
2 that there is not really an impact upon the neighborhood.
3 Members don't take up parking spaces. Most of the people who
4 actually work there take public transportation to get there.
5 As I said, they are only there during working hours.

6 MS. KING: Now you mentioned in your submission
7 that the staff will park in the Galludet parking lot. Do you
8 have a formal arrangement with Galludet for your people to
9 park there?

10 MR. MERKLINGER: We have a pay parking lot
11 across the --

12 MS. KING: Oh, they have a paying parking lot?

13 MR. MERKLINGER: Yes, they do. A double
14 -- it is like a three-story structure. And as I said, most of
15 the staff doesn't drive anyway.

16 MS. KING: But those that do pay for parking?

17 MR. MERKLINGER: Yes, off-street. There is
18 public parking on the street now. My understanding is
19 actually they are going to change that. But right now, there
20 is public parking. They are going to change it so it requires
21 a sticker and limited two-hour parking. But as of today, it
22 is open to anyone to park there.

23 MS. KING: There is no residential parking
24 permits required?

25 MR. MERKLINGER: That is my understanding, yes.

26 CHAIRPERSON REID: Well, can you clarify a

1 couple of things for me? Currently, the building is operated
2 as a school building?

3 MR. MERKLINGER: Administrative offices for --
4 no classes are taught in the building.

5 MS. KING: I think what the situation is is
6 that they purchased or leased --

7 MR. MERKLINGER: They have leased the building.

8 MS. KING: Leased the building, moved in, and
9 then discovered that they needed zoning approval to have an
10 office in the building.

11 MR. MERKLINGER: That is correct. It is our
12 understanding --

13 MS. KING: And that is why they are before us.

14 CHAIRPERSON REID: Okay. Something that I read
15 said you have classes once a month for three days -- three-day
16 segments of classes.

17 MR. MERKLINGER: Yes, they do. Not in the
18 administrative building. The reason we have that building
19 right where we picked that location is that the classes are at
20 the Kellogg Center, which is a conference Center run by
21 Galludet University. It is directly across the street at the
22 campus.

23 CHAIRPERSON REID: The classes are across the
24 street?

25 MR. MERKLINGER: Yes, they are.

26 CHAIRPERSON REID: What currently goes on in

1 this building?

2 MR. MERKLINGER: It is a paper office. It is
3 for student records.

4 CHAIRPERSON REID: No. What I am asking you is
5 you are currently, as Ms. King was saying -- that is what I
6 was trying to get at. It is just that you are currently using
7 it as such -- as the office building?

8 MR. MERKLINGER: As an administrative office.

9 CHAIRPERSON REID: Illegally?

10 MR. MERKLINGER: Yes.

11 CHAIRPERSON REID: And now you want to
12 legitimize the operation, as it were.

13 MR. MERKLINGER: What happened is that they
14 leased the premises about a year ago and they did not realize
15 that they could not use it for an office.

16 CHAIRPERSON REID: Okay.

17 MR. MERKLINGER: They are currently going
18 through the D.C. licensing.

19 CHAIRPERSON REID: Okay. I see. How did you -
20 - how is it that you -- no one told you when you leased it
21 that it was improper? An improper use? I mean, how did you
22 then determine that you did have to get one?

23 MR. MERKLINGER: Well, they are going through a
24 licensure with the education review, and part of -- just one
25 of the normal things is a certificate of occupancy. And it
26 turned out that that was zoned for residential. So they

1 really --

2 CHAIRPERSON REID: What was there before?

3 MR. MERKLINGER: What was -- it is housing -- I
4 mean, family.

5 CHAIRPERSON REID: Okay. It is zoned R-4?

6 MR. MERKLINGER: Yes, it is.

7 CHAIRPERSON REID: Okay.

8 MS. BAILEY: Madam Chair, I just wanted to
9 remind the Board that this is a use variance. Once the use
10 has been changed for this building, it will always be used for
11 that purpose unless it is changed back before the Board.

12 MS. PRUITT: The use runs with the property is
13 what she is saying.

14 CHAIRPERSON REID: Yes. We understand that.
15 Well, you are asking for a variance, you know. And as such,
16 you have to make a case for a use variance. You have
17 indicated in your submission that there is an undue hardship
18 because the building is less than 100 feet from Galludet
19 University. That is your undue hardship?

20 MR. MERKLINGER: There is no undue hardship as
21 far as changing the structure. Nothing needs to be changed to
22 the building or the physical location. Part of what happens
23 when we filed is we requested this special use, just a change
24 for that purpose. The office next door said that this was the
25 correct procedure to use. What we want is, as I said, just
26 use it for the administrative office.

1 CHAIRPERSON REID: Then you said that the
2 hardship would come about as a result of having to relocate.

3 MR. MERKLINGER: Yes. I realize that under the
4 regulations of hardship -- if the lot itself, anything needed
5 to be changed or altered in the physical location. There is
6 no hardship as far as to the structure. We actually don't
7 need to change anything on the building.

8 MS. KING: No. You misunderstand the meaning
9 of that. The hardship is why would it be a hardship for the
10 owner to continue the permitted use of the property, which is
11 residential.

12 CHAIRPERSON REID: To not continue.

13 MS. KING: To not continue. I mean, why would
14 it be a practical difficulty or a hardship.

15 CHAIRPERSON REID: In this instance, it is
16 undue hardship or perhaps a difficulty as opposed to area
17 variance.

18 MR. MERKLINGER: But as I said, there is no
19 hardship as far as the building.

20 MS. KING: Don't say that. As I was trying to
21 point out to you, the thing is that you don't have a basis for
22 your --

23 MR. MERKLINGER: But I am not trying to
24 misrepresent anything to you. What I am saying is to fulfill
25 this or to make this happen --

26 MS. KING: How long was the building empty

1 before you leased it? Was it empty when you leased it?

2 MR. MERKLINGER: That I would have to ask Mr.

3 Choi, the owner of the property.

4 MS. KING: And he is behind you, is he not?

5 MR. MERKLINGER: Yes, he is.

6 MS. KING: And he is sworn in. Maybe he could

7 come and testify.

8 CHAIRPERSON REID: Okay. Are you all

9 testifying with the applicant?

10 MS. KING: They all got sworn in.

11 CHAIRPERSON REID: Come forward. Come forward.

12 MR. MERKLINGER: As I said, what we are saying

13 is that they are in the office and they have been there for a

14 year. They would like to continue using it. It is a great

15 location. It sits right across the street.

16 MS. KING: None of that is germane to the

17 argument that -- making your case -- that you have to

18 demonstrate in order to gain a variance.

19 MR. MERKLINGER: I understand. We were told

20 that there are three prongs to the variance.

21 CHAIRPERSON REID: Exactly.

22 MR. MERKLINGER: Exactly. As far as the

23 hardship, actually what we have is that what I am saying is

24 the hardship is more a financial hardship -- when the

25 regulations talk about hardship to the land use. I am saying

26 to grant this, you don't have to change anything to the

1 structure. It is not going to affect the integrity of the
2 block -- the physical structure. The use of the land, we don't
3 have to do anything to change that. That, in itself, is not a
4 hardship. But I am saying that under anything that we
5 consider a hardship is you would have to make these people
6 move out of a building that works very well and does not have
7 any adverse effect upon the community. If anything, it helps
8 improve the area.

9 MS. KING: What was the building used for
10 before you leased it, Mr. Choi?

11 MR. CHOI: I am the owner of that building or
12 house.

13 MS. KING: Identify yourself by name and your
14 home address.

15 MR. CHOI: My name is Steve Choi.

16 MS. KING: Sit down.

17 MR. CHOI: I own the property. I bought it
18 back in late 1980 as an investment property. It was infested
19 with I guess drug dealers inside and I got a loan and
20 renovated the whole place, gutted it out. I could not find a
21 tenant, but luckily I had an employee who was living there and
22 taking care of it.

23 MS. KING: How long was it without a tenant?

24 MR. CHOI: In early 1990's, about two years. I
25 had a break-in several times -- on several occasions. I
26 noticed one thing, if you have somebody occupy, they will not

1 break it in.

2 MS. KING: They had what?

3 CHAIRPERSON REID: If someone is occupying it.

4 MS. KING: Oh, I see.

5 MR. CHOI: Yes, if someone would occupy it,
6 they would never break it in. Integrated Medicine, I think
7 they leased it almost a year and a half ago from me. Ever
8 since then, the building has been improved exposure-wise. The
9 painting has been maintained and it is more lively, I guess,
10 in a sense. The hardship I think that Jim was saying is that
11 definitely it would be a hardship because it would be empty.
12 And it would be a hardship for them because it is right across
13 the street from Galludet University. If they have to move
14 somewhere else, I definitely think it would be a hardship for
15 their employees who are associated with the place. The
16 parking matter-wise, they have paid parking, like three
17 stories across the street. So that is no problem.

18 CHAIRPERSON REID: But the gist of this is that
19 this is an R-4 as it is zoned. This is residential.

20 MR. CHOI: That is right.

21 CHAIRPERSON REID: It is across the street from
22 Galludet?

23 MR. CHOI: Right across from the gate.

24 CHAIRPERSON REID: Okay. Now, as such, if
25 someone just wants to move into residential housing and make
26 it an office, it would have no -- that would run afoul of our

1 zoning regulations. That is why we have zoning regulations.
2 Now, if in fact someone wants to use a property that is zoned
3 in one district in another way, then that is why we have
4 variances and special exceptions. But in order to apply that,
5 you have to meet the three-prong test. So far, I have not
6 seen any validity in your making a case for us to give you a
7 variance. Because what you are saying is not undue hardship.

8 MS. KING: Mr. Choi has said that he fixed it
9 up as a residency and rented it for two years and was unable
10 to do --

11 CHAIRPERSON REID: It can't be economic. It
12 has to be inherent in the land.

13 MS. PRUITT: For a use variance, it can be
14 economic.

15 CHAIRPERSON REID: Okay. My understanding was
16 that it could not be economic.

17 MS. PRUITT: It can be both. Now for a use
18 variance, it can be economic hardship. The fact that if Mr.
19 Choi -- is that correct?

20 MR. CHOI: Yes, ma'am.

21 MS. PRUITT: Was unable to lease his property
22 as residential as the zone is, that could be a facet in
23 granting a use variance.

24 CHAIRPERSON REID: Okay.

25 MR. CHOI: Also, Madam Chairman --

26 MS. PRUITT: But he would need to demonstrate

1 that he was not able to or that it was very difficult in doing
2 so.

3 CHAIRPERSON REID: All right.

4 MR. CHOI: Also, Madam Chairman, I talked with
5 the Zoning Board downtown, I guess, and they told me owner-
6 occupied can have any office you want. Because I am not
7 occupying that, I cannot get the special use permit. If I
8 were to occupy the --

9 MS. PRUITT: Right. You can get a certificate
10 of occupancy --

11 CHAIRPERSON REID: Oh, owner/occupant.

12 MR. CHOI: Owner/occupant, that is right.

13 CHAIRPERSON REID: Let's look at uniqueness. I
14 did garner from looking at the plat map or at the Sandborne
15 map that it appears that you are right here on this corner.

16 MR. MERKLINGER: Yes, that is correct.

17 CHAIRPERSON REID: And it appears that you are
18 triangularly shaped. You do have an irregular shape or a
19 unique shape compared to the regular -- the other shapes of
20 the properties on that particular square, which appear to be
21 rectangular. I am helping you to make a case here.

22 MR. MERKLINGER: Yes. There is only one
23 building adjacent to the property, the neighbor.

24 CHAIRPERSON REID: Well, the idea is that there
25 has to be something unique or unusual about your particular
26 property -- it is irregular or it is narrow or shallow or

1 something that would give us the basis for -- you could fill
2 in that first category. And it does appear that it is
3 irregularly shaped. That makes it unique to the rest of the
4 properties on the block or on the square.

5 Now let's go to undue hardship. So we are
6 saying, Ms. Pruitt-Williams, is that in this instance, if in
7 fact the owner has not been able to lease the property and has
8 not been able to for some time and it caused a financial
9 hardship as a result, then that could be the basis.

10 MS. PRUITT: That could be the hardship.

11 CHAIRPERSON REID: Okay. All right.

12 MS. KING: No questions. I would like to hear
13 from the ANC.

14 CHAIRPERSON REID: No, let's look -- before
15 that, let's go to adverse impacts. Have you had any feedback
16 from the neighbors or the abutting property owners in regard
17 to your application when you posted it?

18 MR. MERKLINGER: I believe Mr. Pernell from the
19 ANC -- we have not had any negative impact. But also, they
20 ANC will approve --

21 CHAIRPERSON REID: In regards to parking,
22 traffic, noise or the like? You have not had any --

23 MR. MERKLINGER: No. It is actually a pretty
24 quiet street.

25 CHAIRPERSON REID: Okay. And do you feel that
26 your application -- granting your application will not impair

1 the -- given the relief that you are asking for would not
2 impair the intent or integrity of the zoning map or the zoning
3 regulations?

4 MR. MERKLINGER: Yes, we do.

5 MR. PARSONS: Madam Chair, I wanted to ask Mr.
6 Choi a question or two. Mr. Choi, this structure seems to be
7 larger than the others in the neighborhood.

8 MR. CHOI: It is.

9 MR. PARSONS: How many units did you have in
10 this building after you renovated?

11 MR. CHOI: What we did is we went in and gutted
12 it out. We did central air conditioning where before you had a
13 boiler system that had a oil tank in the basement. So we -- in
14 a sense, we left the structure as is, but the operating HVAC
15 heating and also the electrical system had to be rewired
16 because the building is of such an old age.

17 MR. PARSONS: So you were trying to lease this
18 or rent this as a single family home?

19 MR. CHOI: Right.

20 MR. PARSONS: How many bedrooms does it have?

21 MR. CHOI: Well, it has got a living room and
22 also a kitchen -- well, actually three and a half bathrooms
23 and four rooms and a living room and a dining room.

24 MR. PARSONS: Would you say this is a lot
25 larger than the other homes in the neighborhood?

26 MR. CHOI: I think because this is a corner lot

1 -- if you look at it in the front, it is not. But this thing
2 goes around the corner. You know what I am saying? So you
3 could say that it is larger than the other units.

4 MR. PARSONS: I am trying to determine is the
5 difficulty you had renting this have anything to do with its
6 oversize for the neighborhood, that is --

7 MR. CHOI: No. The difficulty is because of
8 what I put in investment-wise, and I want to meet the mortgage
9 payment. And most things in that area do not meet that
10 figure. As a matter of fact, after the renovation, I had a
11 hard time kicking the tenant out. Once they moved in, they
12 would not pay me the rent. As a matter of fact, they
13 vandalized the building when they left.

14 MR. MERKLINGER: Madam Chair, pointing out that
15 it does sit on the corner lot and there is the traffic of the
16 avenue right there and also in the front, as opposed to anyone
17 -- I don't think you would move in if you had children or
18 anything. You have a lot of traffic there and it is exposed
19 to the public as far as around the corner street.

20 CHAIRPERSON REID: I know that area very well.
21 What made you purchase -- for the record, why did you purchase
22 the property?

23 MR. CHOI: I have business in the market. At
24 that time back in the mid-1980's, real estate was really
25 booming. I had some money that I made from business and I was
26 thinking from time to time when it is snowing or in the

1 wintertime, I could not go to Virginia and I would like to
2 live there. But I found out once we renovated it, that we had
3 break-ins and I was kind of afraid to live there.

4 CHAIRPERSON REID: You said that the area was
5 drug-infested?

6 MR. CHOI: Yes, exactly.

7 CHAIRPERSON REID: I think that even though
8 that is not a basis for granting a variance, but when a
9 property can be brought into service and to offset any kind of
10 illicit activities around it, that is in my opinion good for
11 the city. All right. Any other comments?

12 MS. KING: Just from Pernell.

13 CHAIRPERSON REID: ANC, please? Mr. Pernell?
14 I am sorry, sir? Mr. Parson just pointed out, were you -- did
15 you wish to say something? I wasn't aware.

16 MR. CHADWICK: Me?

17 CHAIRPERSON REID: Yes.

18 MR. CHADWICK: No. I am Alan Chadwick. I am
19 the CEO for the University. If there were hardship questions,
20 I could explain those.

21 MR. PERNELL: Good morning, Board members and
22 members of the audience. My name is Daniel Pernell, III, and
23 my last name is spelled P E R N E L L. I am chairman of the
24 6A Commission on Capitol Hill, and I am here on behalf of
25 Wanda Steven Harris in the single member district of 1131 and
26 her ANC single member district is 6A09. Ms. Harris and the 6A

1 Commission was not aware of this facility in the area. We
2 assumed that it was a residential home, and when we did find
3 out, we started inquiring about this facility. I have
4 witnessed for many years living in that area that this house,
5 as the gentleman has said, was in bad shape and was a drug-
6 ridden facility, and he came in and spruced it up and has
7 gotten some occupancy in it. But the real concern is that the
8 property has made an improvement to the Northeast community
9 where we have been working so many years in improving that
10 Northeast corner of New York Avenue and Florida Avenue, and
11 the facility at 1131 being revamped has done just that for the
12 community. And we are very proud that someone did come along
13 and do something.

14 What we were concerned about with that facility
15 there is that it was used as an office facility and that we
16 felt that the 6A and the single member district of Ms. Wanda
17 Harris felt that indeed the owner of this facility was and is
18 in violation of the zoning code of the R-4 residential area.
19 Nevertheless, the ANC conducted its ANC zoning and license
20 subcommittee on July 7, 1999, whereas the following results
21 after hearing from both parties is that the 6A Commission
22 voted to support Commissioner Wanda Harris in favor of
23 permitting the premise at 1131 8th Street, N.E., to be used as
24 an administrative paper office only, and not to be used as a
25 medical facility or as a living quarters. At that time, the
26 present facility would come up for a one-year review under the

1 purview of the 6A Commission and the single member district of
2 Wanda Harris for review for an extension after that period.

3 Ms. Harris wanted to emphasize that the
4 facility is to be used for paper use or administrative use
5 only. It is not to be used for sleeping quarters. And that
6 the staff who use that facility are indeed and will be parking
7 on the facility at Galludet only and not in the R-4 community,
8 whereas it would impact that community.

9 Also, she feels that the delivery trucks that
10 are delivering materials to that facility should be parked in
11 the required 15-minute timing and loading and unloading there
12 at that facility.

13 Madam Chair, we also heard from a constituent,
14 Mr. Ricky B. McLain of 1122 8th Street, N.E., Washington, D.C.
15 20002. We had a conversation with him out in the hallway.
16 And I want to provide for the record what he has had -- the
17 disadvantage impact on the community there as far as Maryland
18 license plates parking at this facility at 1131. I told him
19 that we would put on the record here that, and they did say
20 before us on July 7 that the staff there will be parking on
21 Galludet property and that they will not be parking in the
22 community area. We were very satisfied with that and we hope
23 that this Board holds them to that. And that is for the
24 record. It is just some vehicles illegally parked extended
25 overnight. Some have Maryland license plates in the area and
26 that is one of the great concerns that the ANC and single

1 member district -- that is also my single member district
2 also. I am on the borderline of Ms. Wanda Harris. She is on
3 one side of 7th Street and I am on the other. So we share the
4 same views in this.

5 Again, to end my statement, we don't object to
6 this facility as long as it stays as a paper administrative
7 office and they obey the wishes of the residents in the area
8 by not parking in front of their houses and using the parking
9 facilities provided to that facility at 1131 at Galludet
10 University. We also want the Board to make note that this
11 facility opened up without the concern and following the
12 regulations of the D.C. zoning and license to be permitted to
13 be there and disrespectful to the single member district ANC,
14 Ms. Wanda Harris, and the 6A Commission. With that, I end my
15 statement.

16 MS. PRUITT: Excuse me, Mr. Pernell, do you
17 have a statement from the ANC with the vote of the quorum?

18 MR. PERNELL: Yes, you should have it before
19 me.

20 MS. KING: It is in our file.

21 MR. PERNELL: Right.

22 MS. KING: We've got it.

23 MR. PERNELL: We had a quorum of I believe --
24 it was unanimous.

25 MS. PRUITT: I just wanted to put it in for our
26 records.

1 MR. PERNELL: We definitely have it for the
2 record. You know, 6A. We definitely try to be on -- the
3 problem that 6A is having is we have a number of BZA
4 applications and we had to explain to our constituents in the
5 community and to the applicants that we have a responsibility
6 as a volunteer body of the D.C. Government to respond to BZA
7 actions, and therefore we made sure that our meetings were
8 public with announcements in and around the 200 feet required
9 and even beyond that to make sure that everyone was covered
10 and that when we made a decision on this property that it
11 would be fairly done, and I think we did so.

12 MS. KING: You have how many members on your
13 Commission, Mr. Pernell?

14 MR. PERNELL: There are 14 Commissioners
15 presently on board. When we had a quorum that day, we had 8
16 members present. The law requires that half of 14 is 7 and
17 one over would be 8.

18 MS. KING: What you attached here said that
19 Doris Wallace was not present and there were only 7 people
20 there.

21 MR. PERNELL: You don't lose a quorum when
22 someone leaves, madam. The quorum is still there. Ms.
23 Wallace was there, but she was discussing a problem with
24 constituents at the meeting. What I am saying is that she
25 wasn't present when we voted. But she was there. She was a
26 part of the quorum. And you don't lose a quorum once the

1 quorum is established?

2 CHAIRPERSON REID: Is that -- really? I need
3 clarification on that.

4 MS. KING: No, don't go there. Don't go there.

5 MS. PRUITT: Well, even if you interpret either
6 way, they still would have maintained it.

7 MS. KING: Don't go there.

8 MR. PERNELL: And let me make it clear for the
9 record, too, Ms. Pruitt and members of the Board, that this
10 was a zoning and license subcommittee combined with a regular
11 -- I called a special meeting on that day because we had a
12 problem with the 6A Commission at the same time. And to keep
13 from having a backlog on the BZA responding, we also at that
14 regular meeting -- we had a combined regular meeting and we
15 had a special meeting with the zoning and license. So,
16 therefore, some members could stay and some couldn't stay.
17 Ms. Doris Wallace did stay, but she was in another area. So I
18 wanted to be fair on the record by saying that she was not
19 present at voting on these issues. But if you notice, we had
20 several applications that day and she did vote on those
21 applications.

22 CHAIRPERSON REID: Mr. Pernell, I just had a
23 question regarding the aspects of your report where you said
24 that you would not like to see this building used for a
25 medical facility or living quarters. It is okay as long as it
26 is used as the office building. But you said that for the

1 special use permit, it will be up for review in one year. And
2 that time, the applicant will come before the 6A Commission
3 and single member district commissioner and request an
4 extension of time for special use in an R-4 community, which
5 is required by D.C. law. Could you elaborate on that?
6 Because I am not real familiar with that.

7 MR. PERNELL: We felt that anyone in R-4 is at
8 the highest resolution you get for a community. And anyone
9 that is coming in with an administrative business like this
10 before us now is asking the ANC and the single member district
11 for special use to exist in that area. And we felt that since
12 they came in illegally -- they were operating without the
13 permission of the BZA and without the knowledge of the single
14 member ANC and the purview of the 6A Commission, and we felt
15 that they should be bound by these restrictions.

16 MS. PRUITT: Madam Chair?

17 CHAIRPERSON REID: Yes.

18 MS. PRUITT: If I am understanding Mr. Pernell
19 correctly, that would be an agreement between the ANC and the
20 applicant and the Board has nothing to do with it. If the
21 Board grants a use permit or a use variance, it runs with the
22 land, regardless of what the ANC and the applicant has worked
23 out.

24 CHAIRPERSON REID: Right. Mr. Pernell, you are
25 familiar with the fact that the use variance runs with the
26 land.

1 MR. PERNELL: Oh, yes.

2 CHAIRPERSON REID: But the aspect of the review
3 -- even if they come for review and you stated that you are
4 not pleased with some type of adverse impact that has come
5 about as a result of the variance being given, what recourse
6 do you have?

7 MR. PERNELL: Well, you know by law now as of
8 1999, ANC and community members have great weight. In the
9 sense that we wanted to use our great weight if this facility
10 and the use of this facility becomes a great impact on the
11 community as far as impact on parking, the staff is not
12 merging --

13 MS. PRUITT: Excuse me. I just want to try to
14 understand you. Great weight in reference to the Board's
15 decision or great weight in reference to what?

16 MR. PERNELL: Great weight in what the
17 community members want in their community if there is an
18 adverse impact.

19 MS. PRUITT: Okay, but Mr. Pernell, once this
20 is -- if this is approved, the application -- it is done. The
21 applicant will have the right forever to use this as an office
22 building.

23 CHAIRPERSON REID: Let me see if I could give
24 you some comfort level at the ANC. What we customarily do is
25 if in fact there is some concern, then we can -- I think we
26 can put conditions.

1 MS. PRUITT: Conditions are generally under
2 special exceptions.

3 CHAIRPERSON REID: Oh, but not with the use?

4 MS. PRUITT: Right. It is either black or
5 white.

6 CHAIRPERSON REID: You can't condition it.
7 What I was going to suggest was that we would condition it for
8 like 3 or 5 years to come back.

9 MR. PERNELL: Well, hypothetically speaking in
10 reference to the Board, what you are saying is true. But what
11 I said in great weight is what the community wants --
12 taxpaying people. These people who use 1131 are transit
13 people. They are --

14 MS. PRUITT: I understand that, Mr. Pernell. I
15 --

16 MR. PERNELL: Can I finish my statement?

17 CHAIRPERSON REID: Please, let him finish.
18 Give him the floor.

19 MR. PERNELL: What I am saying is that we have
20 a right in our community to scrutinize any business that comes
21 here. These people come and go and they do not put any money
22 into our budget except for the use that they use it from 8:30
23 to 5:30 p.m. All I am saying is that we have a nice agreement
24 with these people. We weren't hostile with them. We came to
25 an agreement. They have agreed to come before us within the
26 year and I will stick to that and I know they will. I am

1 foreseeing that -- I appreciate the facility there. What I
2 don't like is the owner taking the responsibility of not
3 coming to the ANC and single member district and discussing
4 this with us so we can have a medium. We have two civic
5 groups -- Near Northeast Citizens Against Crime and Drugs and
6 the Public Interest Civic Association -- sitting right on that
7 borderline. We have a community council right at Galludet
8 that we deal with. And I am on that board and this is what we
9 want. We want a relationship with these people. Now, we
10 didn't have any opposition when we threw out what we wanted in
11 our subcommittee on July 7. And I think we came -- we could
12 have been very hostile to the owner of this facility, but we
13 weren't. And clearly, as they have said here today, they were
14 operating without having permission by the zoning regulations
15 of the District of Columbia.

16 MS. PRUITT: Madam Chair --

17 CHAIRPERSON REID: Excuse me, Ms. King?

18 MS. KING: I would like to hear what Ms.
19 Pruitt-Williams has to say, because I think once we give a use
20 variance, that is in perpetuity.

21 MS. PRUITT: My concern is that while Mr.
22 Pernell's issues are valid concerns, this is not the correct
23 place for them to be aired because you have no jurisdiction
24 over that. When you issue a use variance -- I mean, if you
25 were to issue a use variance, it runs with the land. The
26 applicant then has the right in perpetuity to use that

1 property that way. Any other agreements that are done between
2 the applicant and the ANC or any civic associations are
3 between them and cannot -- the BZA cannot enforce them.

4 CHAIRPERSON REID: I think I understand. I
5 think what the concern is --

6 MR. PERNELL: It --

7 CHAIRPERSON REID: Let me.

8 MR. PERNELL: Go ahead.

9 CHAIRPERSON REID: They have now established a
10 rapport with the school --

11 MR. PERNELL: Galludet University.

12 MS. PRUITT: With the University and Galludet.

13 CHAIRPERSON REID: With the University and
14 Galludet. So what they are asking -- and this would be --
15 this is an agreement between you and them to come back after a
16 year, and this agreement would also stipulate, I suppose --
17 again, it wouldn't be a part of us -- but contained therein
18 you would stipulate that in the event there are any adverse
19 impacts that they would be ameliorated as quickly as possible,
20 and they would agree to do so. Is that what you are saying?

21 MR. PERNELL: Right.

22 CHAIRPERSON REID: But that would not be
23 -- that is between -- and I see here in your letter now that
24 you didn't say that the BZA would do it. You are just saying
25 that you want that as a part of your agreement with them.

26 MR. PERNELL: Absolutely. And the 6A

1 Commission has been very fair to the businesses coming to the
2 District of Columbia.

3 CHAIRPERSON REID: Sure.

4 MR. PERNELL: We want them to respect our
5 community like we would their business. You know, if
6 President Jordan would have heard of their existence being
7 here illegally, he would have been very upset. Because he had
8 an on and on relationship with us. Up until yesterday, we had
9 a ribbon-cutting ceremony. So this would be very upsetting to
10 him for them to come before us like that. But nevertheless,
11 the community wants to move forward -- the Near Northeast
12 Community wants to move forward and we want these people only
13 to respect our community and by that coming before us. And
14 there should be some restrictions on the owner that does this.
15 It is not the people who are occupying this facility. It is
16 the owner who comes before us. And there is great weight in
17 the community.

18 MS. PRUITT: I understand that, Mr. Pernell.

19 MR. PERNELL: I am not disputing you. I am
20 just making a -- what I just wanted to say is that to make it
21 clear while they are here because these people don't meet
22 before us. They met with us only because the application came
23 before us. They won't attend our civic meetings and our ANC
24 meetings. So I want to make it very clear for the record that
25 if this facility in the far future becomes an adverse negative
26 impact on the community, we have a mechanism set up to have

1 them closed down under DCRA and with the police department.
2 What we are saying is we want to avoid that by having this
3 relationship with them. And, therefore, that is why we are not
4 contesting their application. We are just asking for the
5 terms that you see in our letter. And I will end it at that
6 before we get into a whole lot of other stuff.

7 CHAIRPERSON REID: Actually, Mr. Pernell, I
8 think that --

9 MR. PERNELL: And letting them know that we are
10 not hostile. We are trying to work with them but they've got
11 to respect our community.

12 CHAIRPERSON REID: I think that that is very
13 important in the city. The ANCs work very hard to try to
14 ensure that the various communities are kept and maintained in
15 the correct manner and that there is no adverse impacts on the
16 citizens who live there when people come into the area. And I
17 think that that is a very important function of the ANC and I
18 really applaud your tenacity in assuring that that happens.
19 This is part of the function of what I think ANCs should
20 really be about. I appreciate that.

21 MR. PERNELL: And that building has for a long
22 time -- you know, we have been down here for years. We are
23 moving into the 21st Century. We just got a proposal for the
24 Subway to be at New York -- I mean, actually in my backyard at
25 First and M Street. We have, I think, included -- it is
26 unauthorized, but I have included Galludet University. I

1 eventually talked to Reverend Jordan and he had a reception
2 there for me, and we told him that we are moving forward.
3 Because we have a lot of Galludet students there and we want
4 whatever facilities for them, and we want to provide it in the
5 Near Northeast, and that is the relationship we have there.

6 CHAIRPERSON REID: Great. Come up. This is
7 the ANC portion, but Mr. Pernell, if you don't mind.

8 MR. PERNELL: No, I don't.

9 MR. CHOI: First of all, I would like to say
10 that I apologize for --

11 CHAIRPERSON REID: Give your name.

12 MR. CHOI: My name is Steve Choi. I am the
13 owner of the property. First of all, I would like to
14 apologize to Mr. Pernell for not informing him about having an
15 office there. First of all, all the time I owned the
16 property, I not one single time got a letter for a community
17 hearing or a community meeting. I was not informed. If there
18 was a meeting or something was involved, I would have showed
19 up and attended, because it affects the value of my property.

20 CHAIRPERSON REID: So you were not informed?

21 MR. CHOI: Yes, ma'am.

22 CHAIRPERSON REID: Okay. Well, then Mr.
23 Pernell is going to make sure that you get the communication.

24 MR. PERNELL: The 6A Commission is very clear
25 on that because I typed up those letters and I sent them to
26 the applicant. The applicant is responsible for informing the

1 owner. We can only go by what the BZA sent us, and that is
2 what I responded to. But nevertheless, we are working with
3 the Asian community in Edward Yum's and all them, so everyone
4 is included. We just want them to attend our meetings. Our
5 meetings, by law, are published. Okay. I accept it.

6 CHAIRPERSON REID: Okay. So you get that
7 little communication problem solved.

8 MR. PERNELL: Yes.

9 CHAIRPERSON REID: Thank you very much, Mr.
10 Pernell.

11 MR. PERNELL: Thank you, Board members.

12 CHAIRPERSON REID: All right. There has not
13 appeared anyone in opposition and no one else has come in
14 support. Closing remarks by the applicant?

15 MR. PERNELL: May I? I am just going to say I
16 do not -- I do not have -- what I would like to say as an
17 attachment is that they would adhere to the parking
18 requirements in that area and that they will use the facility
19 at Galludet to park and not in the community.

20 CHAIRPERSON REID: They have proffered here
21 today on the record that they are using paid parking at
22 Galludet.

23 MR. PERNELL: Okay.

24 CHAIRPERSON REID: They have secured those
25 parking spaces.

26 MR. PERNELL: All right.

1 CHAIRPERSON REID: So that is adequate for us.

2 MR. PERNELL: I thank you.

3 MR. CHOI: Could I add to the parking park?

4 CHAIRPERSON REID: Give your name.

5 MR. CHOI: My name is Steve Choi. On the

6 parking matter, because it is on the street, we have no

7 control who parks in the front of it. He mentioned about

8 parking with Maryland tags. I was not aware of somebody who

9 has Maryland tags. Anybody can park there.

10 CHAIRPERSON REID: Well, what he said was --

11 what the applicant stated was that they were going to make

12 sure that the six persons who work there park on the Galludet

13 parking or paid parking, and that is the only thing that we

14 are concerned about. Now I don't know in regard to visitors -

15 - I don't know if it is a -- can you come forward? I don't

16 know if there is a building -- come forward and give your name

17 for the record.

18 MR. CHADWICK: Yes, I am Alan Chadwick. I am

19 the CEO and chief financial officer for Capital University. I

20 want to address Mr. Pernell's question. One is we do want to

21 become part of the neighborhood. I have only been there six

22 months and I have met Mr. Pernell and we want to be open. In

23 the past, I can't explain what happened prior to me getting

24 there and taking over. But we do want to be part of the

25 community. We want to make sure the community is safe, not

26 only for the people who live there but the surrounding area.

1 So we are going to work with you and we will be there at your
2 meetings. We may not agree all the time, but at least we want
3 to take part in it. And we will abide by the regulations of
4 the ANC, because it is your neighborhood. It is our
5 neighborhood also, whether we are transient or not. We belong
6 to Washington, D.C. We work here and we want to be part of
7 the neighborhood. We may not pay all the taxes that you pay,
8 but certainly our taxes go to support the school system. The
9 parking situation, we really can't control. I came to work
10 this morning at 6:00 and there was somebody from Texas, a
11 truck I never saw before. So either Galludet students who
12 live there or live across the street.

13 CHAIRPERSON REID: Excuse me. The concern is
14 that --

15 MR. CHADWICK: We are going to use Galludet.

16 CHAIRPERSON REID: The persons who are employed
17 at that facility or at that address will park on the Galludet
18 Parking lot.

19 MR. CHADWICK: I pay the bills and they will be
20 parking at Galludet.

21 CHAIRPERSON REID: And the other parking
22 -- my question was do you have people who come -- like
23 visitors who come there on business?

24 MR. CHADWICK: Very, very rarely. Basically,
25 we have an open house -- to address Ms. King's question about
26 what kind of university it is -- and I will regress a little

1 bit. This is an integrated medicine where you take the
2 alternatives and compile it with practical medicine. We have
3 acupuncturists, aroma therapy, dentistry, and toxic chemicals.
4 We keep them coming and they are all doctors or dentists or
5 naturopaths, so on and so on. We meet at Galludet for one
6 weekend, Friday, Saturday and Sunday. All the people who fly
7 in from all over the country go to Galludet. They are at the
8 Kellogg Center. They park at the Kellogg Center. Yes, we do
9 have delivery trucks and Fed-Ex's, but there are not really
10 that many. You know Fed-Ex's and UPS, they are 10 minutes or
11 less and they are gone. So we make sure of that. We meet on
12 that one weekend a month. There is an open house at the
13 Kellogg Center. Everybody is focused there. All the money
14 that is derived there comes -- and that is a lot of money. We
15 paid almost \$100,000.00 last year to Galludet to hold the
16 classes. So that is substantial support for the neighborhood.
17 Dr. Williams is one of the founders and Judge Jackson is one
18 of the founders of the university, and they are D.C.
19 residents. They contribute regularly to the school. So, we
20 want to be part of the community. We will address the
21 questions about parking. I pay the bills. They will all park
22 there. I park there. So I don't think that is going to be a
23 problem. If there are other people there, please come see me
24 or have Mrs. --

25 MR. PERNELL: Could I pose one small question?
26 If you are having deliveries -- and we know Federal Express

1 and all them because they have a limit of 12 to 15 minutes, I
2 believe. But these deliveries that are going to take a little
3 longer, could you post a notice in the area where they are
4 going to be doing that to the community so they will know?

5 MR. CHADWICK: Well, the problem we have got is
6 that where they deliver is right in front of the fire hydrant
7 unfortunately.

8 MR. PERNELL: And that is already a violation.

9 MR. CHADWICK: Right. So --

10 CHAIRPERSON REID: You have to move in and out
11 fast.

12 MR. CHADWICK: So they move in and out real
13 fast.

14 MR. PERNELL: Okay.

15 MR. CHADWICK: So I don't know what kind of
16 sign that we can do, but we will certainly work with that.

17 CHAIRPERSON REID: Look, those details you all
18 can work out between the two of you. And if you need it, fine.
19 Maybe you don't need it. If it is going to be addressed with
20 the fire hydrant, then perhaps you don't need it.

21 MR. PERNELL: Madam Chair, I read that the 6A
22 Commission and the single member district that Wanda has is
23 very pleased with this business being there.

24 CHAIRPERSON REID: Okay. Thank you very much.

25 MR. CHADWICK: Thank you.

26 CHAIRPERSON REID: All right. Closing remarks

1 by the applicant.

2 MR. MERKLINGER: I am Jim Merklinger. We are
3 very happy actually with the process of meeting with the ANC
4 and getting to know the neighbors and actually with the review
5 process. The University itself is before the licensing board
6 for a review of its permission to operate in the District.
7 This process has actually gone fairly quickly. And we ask that
8 if we are approved that we just know the time frame if a
9 permit were to be issued so that we would be able to notify
10 the licensing board that the University would be in compliance
11 with their guidelines also.

12 MS. KING: I would move that we grant this
13 application. It seems to me that they have eventually and
14 substantially met the burden of proof and that we could issue
15 a summary order granting this application.

16 CHAIRPERSON REID: Mr. Parsons?

17 MR. PARSONS: Second.

18 CHAIRPERSON REID: Did you have any comments?

19 MR. PARSONS: Well, the point I was trying to
20 make earlier I think has bearing here, and that is that this
21 property is difficult property to use for residential purposes
22 because of its size in the context of the other -- I mean, the
23 exhibits in this case show the photographs of other structures
24 to be used for residential are half the size, if that. For
25 that reason, I think there is a hardship in this case. I
26 don't know if you all concur with that, but that is where I

1 was going with that line of questioning.

2 MS. KING: I agree.

3 CHAIRPERSON REID: I concur with my colleagues
4 and feel that they have met the burden of proof for a use
5 variance, and that there does not appear to be any adverse
6 impacts. There is no one here in opposition. The ANC is in
7 favor of it with periodic review. So, therefore, I would be
8 in favor of granting this application. All in favor? Aye?

9 ALL BOARD MEMBERS: Aye.

10 CHAIRPERSON REID: Opposed?

11 MS. PRUITT: Staff will record the vote as 3 to
12 0 to approve, motion made by Ms. King and seconded by Mr.
13 Parsons.

14 CHAIRPERSON REID: Okay. You should have your
15 summary order in approximately two weeks.

16 MR. MERKLINGER: Two weeks? Thank you very
17 much.

18 CHAIRPERSON REID: This concludes the July 21
19 public hearing for the morning session. We will resume at
20 1:00.

21 (Whereupon, at 12:00 noon, the hearing was
22 adjourned for lunch to reconvene at 1:00 p.m. this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:00 p.m.

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the July 21st public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and John Parsons representing the Zoning Commission. Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the reporter sitting to my right.

The order of procedures for special exception and variance cases will proceed as follows: one, statement and witnesses of the applicant; two, government reports including Office of Planning, Department of Public Works, ANC, et cetera; three, persons or parties in support; four, persons or parties in opposition; five, closing remarks by the applicant. Cross examination of witnesses is permitted by persons and parties with a direct interest in the case. The record will be closed at the conclusion of each case, except for any materials specifically requested. The Board and the staff will specify at the end of the hearing exactly what is expected.

1 The decision of the Board in these contested
2 cases must be based exclusively on the public record. To
3 avoid any appearance to the contrary, the Board requests that
4 persons present not engage the members of the Board in
5 conversation. The Board will make every effort to conclude
6 the public hearing as near as possible to 6:00 p.m. If the
7 afternoon cases are not completed at 6:00 p.m., the Board will
8 assess whether it can complete the pending case or cases
9 remaining on the agenda.

10 At this time, the Board will consider any
11 preliminary matters. Preliminary matters are those which
12 relate to whether a case will or should be heard today such as
13 a request for postponement, continuance or withdrawal, or
14 whether proper and adequate notice of the hearing has been
15 given. If you are not prepared to go forward with the case
16 today or if you believe that the Board should not proceed, now
17 is the time to raise such a matter. Are there any preliminary
18 matters?

19 MR. BROWN: Madam Chairman, a quick question.
20 My name is Patrick Brown from Greenstein, DeLorme and Luchs.
21 On the action agenda, I don't see reference to 16455, Amoco.
22 We are going to proceed with that case today?

23 MS. PRUITT: Correct. That is one of the cases
24 that had been postponed from a previous hearing. This is the
25 agenda that went to the public hearing notice, but it is on
26 the end.

1 MR. BROWN: Thank you.

2 MS. PRUITT: And that also goes for 16459.

3 CHAIRPERSON REID: And, Mr. Brown, we apologize for
4 that omission. It should have been on the agenda, but it was
5 not. But it is going to be heard this afternoon.

6 MR. BROWN: Thank you very much, Madam Chair.

7 CHAIRPERSON REID: Thank you. And hereafter,
8 we will make sure that those --

9 MS. PRUITT: It will be on the agenda that is
10 ready for this meeting. It won't be published, but it will be
11 --

12 CHAIRPERSON REID: For the meeting date it will
13 be available.

14 UNKNOWN SPEAKER: Case 16459 will be heard this
15 afternoon?

16 MS. PRUITT: Yes. Madam Chair, staff has one
17 preliminary matter.

18 MS. KING: I think Gottlieb Simon has something
19 too.

20 CHAIRPERSON REID: Come up, please.

21 MR. SIMON: Good afternoon, Madam Chairperson.
22 My name is Gottlieb Simon. I am representing Advisory
23 Neighborhood Commission 6B. I am the executive director, and
24 I have two preliminary matters with regard to case 16459, the
25 Marquette University Les Aspin Center case.

26 CHAIRPERSON REID: Okay.

1 MR. SIMON: I want to raise the issue of notice
2 on one issue and another question about it on a second matter.
3 The first issue of notice, I understand that this case came up
4 and was rescheduled for today. I would suggest to you that
5 under those conditions, we really should have received another
6 notice. We didn't receive any notice for today. It was not
7 included in the proposed agenda, as you have already
8 established, that was prepared for today.

9 And finally, I will tell you that callers to
10 the office last week attempting to determine whether or not
11 the case was scheduled were given a variety of answers, some
12 of whom were told that the case was not on and some were told
13 that the case had been requested for a continuance on the part
14 of one of the ANC's. It wasn't on the part of this one. And
15 I understand it wasn't 6A either. So for all those reasons,
16 we would ask that the case, in fact, be rescheduled for
17 another date.

18 CHAIRPERSON REID: Was the ANC present at the
19 previous hearing date?

20 MR. SIMON: No, we were not.

21 CHAIRPERSON REID: You were not present?

22 MR. SIMON: We were not present.

23 CHAIRPERSON REID: But you were notified?

24 MR. SIMON: I am not sure that we were notified
25 to be present at that time. But I will tell you that the
26 Marquette University staff person told me that he had

1 submitted a request for a continuance from May 21st, which was
2 when it was on. And as a result of that representation, we
3 were not present. We were waiting subsequently to in fact
4 receive an official word for when it was rescheduled for.

5 MS. PRUITT: Madam Chair?

6 CHAIRPERSON REID: Yes.

7 MS. PRUITT: This case was -- well, it was
8 postponed from its original hearing date, and it has been this
9 office's policy -- we don't have the resources to renotece
10 everyone. That is why we announce it to a date certain, so
11 that we don't have to renotece. And it has been the standing
12 policy of the office. We can change it if you wish. It is
13 that anyone who would be here for the hearing would then be
14 informed of its postponement and then could make the choice to
15 come back.

16 CHAIRPERSON REID: Okay. But the only flaw in
17 that policy is if the ANC is not present at the hearing and
18 the ANC does not have adequate notice then --

19 MS. PRUITT: ANC was noticed on this.

20 MS. KING: Originally.

21 CHAIRPERSON REID: But on the subsequent
22 hearing.

23 MS. PRUITT: It is the responsibility of the
24 ANC to either provide someone at the hearing to then -- so
25 that if it is postponed, they know. We have not -- we don't
26 have the resources to renotece everybody again.

1 MS. KING: But I think the ANC's, because of the
2 great weight we must give to them, fall into a different
3 category, and I would suggest, Madam Chair, that we should
4 institute a policy of if the ANC is not here or is not
5 represented at the meeting, that we certainly have got to let
6 them know. Even if both adversaries in an adversarial hearing
7 are here and the ANC is not, we have to let the ANC know.

8 MS. PRUITT: Ms. King, that is a rulemaking
9 issue that the Zoning Commission would have to take up.

10 MS. KING: All right. Well, I would suggest,
11 Madam Chair, that we refer to the Zoning Commission as a
12 matter of absolute urgency.

13 CHAIRPERSON REID: Since Mr. Parsons does
14 represent the Zoning Commission, what is your feeling about
15 that?

16 MR. PARSONS: I am trying to recall on how many
17 occasions this occurs. Is this unique? How many times do we
18 notice something and we have a hearing and the ANC is not
19 there and it is postponed? We could take it up as part of
20 rulemaking, but it is probably very seldom. Is it only the
21 ANC that you are interested and not everybody who was noticed
22 within 200 feet?

23 CHAIRPERSON REID: No. Just the ANC because of
24 the great weight.

25 MS. PRUITT: However, they receive the same
26 great weight as a party. And since parties are not determined

1 prior the hearing --

2 CHAIRPERSON REID: No, we don't -- the great

3 weight is only afforded to the ANC.

4 MS. PRUITT: But parties have similar concerns.

5 So you are not addressing parties at that point, too. That is

6 my concern.

7 MS. KING: But if they are parties, they have

8 to be here at the first hearing.

9 MS. PRUITT: Parties are determined then,

10 though. That is the whole issue.

11 MS. KING: Pardon?

12 MS. PRUITT: You have not determined parties --

13 sometimes you have not determined parties at that point.

14 MS. KING: But still, if they wanted to be a

15 party, they would be here.

16 CHAIRPERSON REID: They have to be here to be a

17 party.

18 MS. PRUITT: That is the same argument for the

19 ANC.

20 MS. KING: No, that is not.

21 CHAIRPERSON REID: The ANC --

22 MR. PARSONS: Let's not have the hearing here.

23 I'll take it back to the Zoning Commission.

24 CHAIRPERSON REID: Yes. But in the interim --

25 MR. BERGSTEIN: The ANC is automatically a

26 party in a proceeding.

1 CHAIRPERSON REID: And they are also afforded
2 great weight.

3 MR. BERGSTEIN: If the question is whether or
4 not you can hold -- if there has been an initial hearing and
5 the ANC is automatically a party and they don't attend the
6 first hearing and they claim not to have notice of the second
7 hearing, I don't think that is a great weight issue. I mean,
8 the regulations indicate that the hearing may be adjourned and
9 a new hearing date set at that hearing and no further
10 advertisement is required. You would have to amend the rules
11 to say unless the ANC party doesn't show up. And then in that
12 case, you would readvertise, but then that would open up a
13 discussion about, well, if they are automatically a party but
14 they don't show up at the hearing and then there needs to be a
15 readvertisement, are they going to show up at the second
16 hearing, and why are you having that type of difference. But
17 the rules allow for a hearing to be resumed without
18 advertisement as long as the date is announced at the first
19 hearing. That is the rule.

20 CHAIRPERSON REID: Often ANCs don't come to the
21 hearing. Sometimes they send a letter. But if in fact that -
22 - be that as it may, as a courtesy we then -- Ms. Pruitt-
23 Williams, could we -- if there is a continuation of a case and
24 the ANC is not present, just as a courtesy could we just call
25 them?

26 MR. BERGSTEIN: You could do that as a policy.

1 MS. PRUITT: We could try. But unfortunately -

2 -

3 CHAIRPERSON REID: Or drop them a --

4 MS. PRUITT: Most of the times, the phone
5 numbers -- we can certainly try to call. My concern is their
6 offices aren't manned all the time, so it is very difficult
7 sometimes to reach them. We can leave voice mails and we can
8 send -- it is a resourcing --

9 CHAIRPERSON REID: A fax notice or something?
10 We could do like a template or a form type of thing that
11 addresses the issue of the fact that the ANC was not in
12 attendance. However, on blank date at blank time, this case
13 number blank has been continued and fax it.

14 MR. COTTINGHAM: Madam Chairperson, if I could
15 --

16 CHAIRPERSON REID: Come forward if you would
17 like to speak and give your name.

18 MR. COTTINGHAM: Steve Cottingham representing
19 Marquette University, the applicant in the manner you are
20 discussing.

21 MS. PRUITT: I am sorry, sir, our PA system
22 isn't working, so could you please speak up?

23 MR. COTTINGHAM: I am sorry. Steve Cottingham
24 representing Marquette University, the applicant in the case
25 that you are discussing. I would just like to say before you
26 rule that we would strongly like to proceed today. I have

1 flown out from Milwaukee this morning to be here. We have
2 arranged to have everyone here. I am a little puzzled, I
3 guess, since the ANC's letter says that they had no meeting
4 back on June 15, why they would need additional meetings at
5 this time. But we are here and we are ready to go. We would
6 strongly prefer to proceed today.

7 MR. SIMON: Madam Chairperson, I would like to
8 make two other points. You may also want to hear from the
9 chair of 6A, who is in the audience as well. With regard just
10 to the issue of today's hearing, I will tell you that I called
11 last week to clarify when this case was, because I had had a
12 conversation with Father O'Brien from Marquette. And I was
13 told by the staff member that it wasn't on for today. I made
14 several calls over several days and got some conflicting
15 answers, but I am here today because my last call said it was.
16 That is on the issue of this particular time.

17 CHAIRPERSON REID: You called this office and
18 you were given conflicting information?

19 MR. SIMON: That is correct. And I understand
20 that other parties -- I don't know if any of them are in the
21 audience who may have come in since I walked over to the
22 table, were told that it was not on here today. So there was
23 some question as to whether or not we were having this. But
24 aside from that kind of an issue, it may be useful for me to
25 bring up my second point now, because that may have some
26 additional bearing on how we proceed.

1 This is a special exception with regard to
2 Section 206 of the zoning regulations. Section 206 has to do
3 with private schools. There is another exception -- another
4 section, Section 210, that has to do with colleges and
5 universities. We would submit that this application has come
6 to you under the wrong section. It should not be coming as a
7 private school. The regulations at several points indicate
8 that they make a distinction or understand that private
9 schools are not the same thing as colleges and universities.
10 Marquette University is clearly a college, a university of
11 higher learning. It is not a private school of higher
12 learning, it is a college and a university. And consequently,
13 this case should be coming before you as a special exception
14 with regard to Section 210 and not Section 206, and
15 accordingly should be readvertised under that section.

16 MR. COTTINGHAM: Madam Chairperson, if I could
17 be heard on that. We discussed that issue with the staff at
18 length before deciding to apply under 206, and we were
19 specifically informed that we could proceed under either 206
20 or 210.

21 CHAIRPERSON REID: What staff, sir, did you
22 discuss this with?

23 MS. PRUITT: DCRA staff or this staff or both?
24 Probably DCRA staff, because that is what refers you here.

25 MR. COTTINGHAM: Right, the office with which
26 we filed the application.

1 CHAIRPERSON REID: I am sorry?

2 MR. COTTINGHAM: The Department of Consumer and

3 Regulatory Affairs.

4 CHAIRPERSON REID: Okay. And there they said

5 you could go either -- did you self-certify? I don't have

6 your file in front of me.

7 MR. SIMON: Yes, ma'am, they self-certified.

8 CHAIRPERSON REID: Okay. And you were told

9 that you could go up under 210 or 206?

10 MR. COTTINGHAM: Correct.

11 MS. PRUITT: Madam Chair, we, of course, just

12 heard this morning the National Graduate University under 206.

13 We also heard the earlier case that is associated with

14 National --

15 CHAIRPERSON REID: Catholic University was 210.

16 MS. PRUITT: I am sorry --

17 MR. SIMON: 210. It originally came in as 206

18 and then was reconverted to 210.

19 MS. PRUITT: Which one? I am sorry?

20 MR. SIMON: National Graduate University

21 originally came before you as a 206. That issue was presented

22 and they were then readvertised as 210. I am not sure what

23 issues may have been resolved with regard to that institution.

24 CHAIRPERSON REID: Catholic University came --

25 MS. PRUITT: Not Catholic, Capital. The last

26 case.

1 CHAIRPERSON REID: This morning we had Catholic
2 University with --
3 MS. PRUITT: And then we had Capital
4 University.
5 MS. KING: But also the Graduate School --
6 CHAIRPERSON REID: Was that not under 210?
7 MS. PRUITT: They have an established campus plan.
8 CHAIRPERSON REID: They had a campus plan.
9 MS. PRUITT: Correct. So they were further
10 processing their existing case.
11 CHAIRPERSON REID: Right. And then Capital
12 University was under --
13 MS. PRUITT: 206, I believe.
14 CHAIRPERSON REID: As was the Graduate
15 University?
16 MS. KING: No. That was under the other.
17 CHAIRPERSON REID: They came in under 210? But
18 they did not have to have a campus plan.
19 MR. SIMON: Madam Chair?
20 CHAIRPERSON REID: Yes.
21 MR. SIMON: National Graduate University
22 initially applied as 206, and that is partly how we became
23 more educated about the issue. They applied at 206 and there
24 was a discussion and they reapplied as 210. And consequently
25 we have been looking at the regulations. I haven't had any
26 conversations in the Department of Consumer and Regulatory

1 Affairs about how they might interpret it. But you will see
2 that if you look on page 31-9 in the chart that explains which
3 particular special exceptions apply to which, you will see
4 that there is a distinction made between a school, between --
5 in the first instance, it talks about a school -- private
6 school, trade school, colleges and universities. It then goes
7 on to have a category called private school, excluding
8 colleges and universities. So there is a distinction and
9 there is an exception. And consequently, the present
10 application ought properly to come under 210.

11 CHAIRPERSON REID: Let me ask staff if to your
12 knowledge -- oh, Mr. Bergstein is here. Is it either/or?
13 When it is time for a college or private school, do you have
14 the option of either/or, or is it one or the other?

15 MR. BERGSTEIN: I don't know if I am prepared
16 to answer that off the top of my head. There are --

17 CHAIRPERSON REID: I don't understand an
18 either/or answer. Either it is or it isn't or whatever.

19 MR. COTTINGHAM: If I might add?

20 CHAIRPERSON REID: Yes.

21 MR. COTTINGHAM: Part of what may have driven
22 that is Marquette is not here. We are a private university
23 located in Milwaukee, Wisconsin. Our program here is not in a
24 sense what people think of probably as a college or
25 university. It is essentially an internship program for some
26 of our students and students from elsewhere. If we get to the

1 matter, Father O'Brien will talk about the very limited
2 presence that they actually have as a private tools capital,
3 essentially once a week. So it is not as if they are taking
4 classes. They are really out here working in congressional
5 offices, FDA, and other government offices. So in looking at
6 31-9, I think it excludes trade schools. In other words, it
7 excludes private colleges and universities.

8 MR. SIMON: 31-9 indicates private schools.
9 And in that particular section that you are referring to, a
10 private schools is distinguished both from a trade school and
11 a college and a university. I don't think that you are
12 suggesting that Marquette is other than a college or a
13 university. I would also like to bring to the Board's
14 attention a letter from council member Ambrose, who also
15 raises the point. I believe you just perhaps received copies
16 of the letter indicating that this is an issue that the Board
17 needs to give some consideration to.

18 And with regard to Mr. Cottingham's last
19 point, I believe that the 20 or so odd -- or up to 20 or so
20 odd students who are at this campus instead of at the
21 Marquette University campus, they are treated as full students
22 -- full-time students, is that not correct?

23 MR. COTTINGHAM: They are earning college
24 credits for this program.

25 MR. SIMON: And in fact, don't they actually
26 pay more tuition to be in Washington than they do in

1 Marquette?

2 MR. COTTINGHAM: I don't know if that is true.
3 I would just ask why that would be relevant.

4 MR. SIMON: Well, it has to do with whether or
5 not it is just a sort of casual relationship that they have
6 with the university. They seem to have about a \$10,800.00
7 relationship with the university during the semester that they
8 are here.

9 MR. COTTINGHAM: But the real issue is whether
10 a private university is not also a private school.

11 MR. SIMON: And our regulations contemplate
12 that a private school is not a college or a university.

13 MR. BERGSTEIN: Can I ask the ANC
14 representative where in 206.1 he is reading the exclusion as
15 not to include universities?

16 MR. SIMON: I am drawing your attention to page
17 31-9.

18 MR. BERGSTEIN: 31-9?

19 MR. SIMON: Right. That is way in the back.

20 MR. BERGSTEIN: Yes.

21 MR. SIMON: And there is a listing -- a table
22 that shows type of special exception, district, and section in
23 which the conditions are specified. Those are the three
24 columns of the table. And as you go down the table, you will
25 see that there is a row -- there are three rows. One row is
26 entitled schools -- college, university, or other academic

1 institution of higher learning -- that is 210. The next row
2 is school-private school, trade school, college or university.
3 So that each one of those entities are separated. And then
4 you see finally the third category, school-private other than
5 trade school. The phrase college or university does not
6 appear in that row.

7 MR. COTTINGHAM: Which was the point I was
8 raising of how you had initially claimed it specifically
9 excluded universities. Instead, you were really just arguing
10 by omission.

11 MR. BERGSTEIN: It does say private school in
12 both places. In one instance it says private school with
13 college or university and the other says private school
14 without college or university. And then the listing above it
15 says college, university, or other academic institutions of
16 higher learning. The main difference between a college or
17 university is that section, in the private school section.
18 The actual standard is the same in the sense that 206.2 says,
19 "A private school shall be located so that it is not likely to
20 become objectional..." And 210 has that same standard. The
21 principle difference is that if there is a campus per se, then
22 there needs to be a campus plan. In other words, if there is
23 more than one building, you need a campus plan, and a special
24 exception can be consolidated in the campus plan. In other
25 words, you can have a campus plan and consolidate that with a
26 special exception for the use itself. The other difference is

1 that in an R-1 zone, colleges get additional bulk flexibility,
2 which if you are applying as a private school, you don't get.
3 In other words, if you are electing to be considered a private
4 school, then you won't get the flexibility requirements of
5 210.3. But there is a different demarcation between these two
6 uses -- between private schools and colleges and universities.
7 As I said, the basic standard is the same except that when a
8 university establishes itself, it has to have a "campus plan".
9 But in this case, there is really no
10 -- if I am correct -- campus. It is a single --

11 MR. COTTINGHAM: It is one -- it is the
12 basement in this building. That is the only space we are
13 talking about.

14 MS. KING: Do you own the entire building?

15 MR. COTTINGHAM: We do. The rest of it is used
16 for residential space.

17 MS. KING: I am sorry, I can't hear you.

18 MR. COTTINGHAM: The rest of it is residential.

19 MS. KING: Oh. Associated with the university
20 or rented out to --

21 MR. COTTINGHAM: Owned by the university.

22 MS. KING: But --

23 MR. COTTINGHAM: The entire building is owned
24 by the university.

25 MS. KING: Yes, I understand. But the people
26 who rent --

1 MR. COTTINGHAM: The program director, Father
2 O'Brien, lives there.

3 MS. KING: I see. Okay. This entire building
4 is for the use of Marquette, but that is the only building you
5 own in the District of Columbia?

6 MR. COTTINGHAM: Correct.

7 MR. SIMON: And just to flesh out the issue of
8 whether or not they are the same or different, also in Section
9 9-12, page 9-8, schools and colleges, you will see once again
10 that there is a distinction or a separation between private
11 school, trade school, college or university. Each are being
12 considered a distinct, separate entity.

13 MR. BERGSTEIN: With respect to -- but we are
14 in an R zone here.

15 MR. SIMON: Yes. But my point is simply again
16 that that phraseology appears once again, indicating that
17 those are not synonymous, but are actually separate entities.

18 MR. BERGSTEIN: How would the advertisement of
19 this as a college or university versus the advertisement that
20 this is a private school prejudice you if the standard appears
21 to be the same in terms of the location, the objectionability,
22 and is subject to the same special exception standard and
23 there is no campus?

24 MR. SIMON: Well, there would be some
25 additional information. There would still be the necessity of
26 a campus plan, whether or not you consider one building to be

1 a campus or not a campus, and the issues of impact upon the
2 neighborhood would be more fully mapped out. You would have
3 the traffic study.

4 MS. PRUITT: Madam Chair?

5 CHAIRPERSON REID: Yes?

6 MS. PRUITT: May I just make a suggestion? The
7 thing with the self-certification is the applicant takes the
8 burden of saying that this is the type of zoning relief that
9 is required. I may suggest that maybe you go forward and if
10 once it gets back to the zoning administrator they determine
11 it comes under 206, that is the burden of a self-certification
12 that then it would have to come back forward. If, for some
13 reason, 206 is upheld and it goes through, then Mr. Gottlieb
14 has the ability to appeal the Zoning Administrations decision.
15 I mean, that is one course. that is why self-certification is
16 done. It allows people to move expeditiously through the
17 process, but they also take that burden and responsibility
18 that they may have to go back through the process if they did
19 not choose the correct zoning and that is just the
20 understanding.

21 CHAIRPERSON REID: Are you a preliminary
22 matter?

23 MS. NEAL: Yes.

24 CHAIRPERSON REID: Then come forward and state
25 your name, please.

26 MS. KING: And address.

1 MS. NEAL: My name is Jean Marie Neal. I am a
2 neighbor at 621 A Street, N.E. I know this is not the time
3 you are taking neighbors' statements, but I wondered if I
4 could address a misleading statement made by the Marquette
5 lawyer that I think is relevant to this and I think that was a
6 question you were attempting to ask that was not answered
7 about the use of the facility. Is that proper that I can
8 address that?

9 CHAIRPERSON REID: Well, I don't think that is
10 a preliminary matter.

11 MS. KING: No, it is not a preliminary matter.

12 MS. NEAL: I am sorry, it just related to your
13 question about a rental facility.

14 CHAIRPERSON REID: At the appropriate time, you
15 will be able to testify.

16 MS. NEAL: Okay. Thank you.

17 CHAIRPERSON REID: Now, the question as it
18 relates to whether or not it should be continued --

19 MS. KING: Well, there are two questions. One
20 is should it be continued and the other is is it advertised
21 under the -- and I think -- I mean, let's dispose of that.

22 CHAIRPERSON REID: No, Ms. Pruitt-Williams I
23 think settled that by simply saying we go under this and then
24 it goes back to ZA. If they kick it out, then Mr. Gottlieb
25 would have to appeal it. Given the fact that we are here.

26 MS. KING: So the Board is going to agree that

1 they have self-certified and if they screwed it up, then they
2 get involved in a long legal appeal and that is the
3 responsibility of their lawyers and architects. So that
4 disposes of that. Now we are on the question of do we
5 postpone or continue.

6 MR. PARSONS: Mr. Simon?

7 MR. SIMON: Yes.

8 MR. PARSONS: Has your ANC taken a position on
9 this matter?

10 MR. SIMON: ANC 6B?

11 MR. PARSONS: Yes.

12 MR. SIMON: ANC 6B, yes. We took a position to
13 oppose the case. And I will tell you now that Father O'Brien,
14 who is here today, has protested very vigorously that we took
15 the case in his absence. MR. PARSONS: Do you have a
16 letter in the record?

17 MR. SIMON: A letter was faxed. I have a copy
18 of the original itself. And --

19 MS. PRUITT: When was it faxed, sir?

20 MR. SIMON: Excuse me?

21 MS. PRUITT: When was it faxed?

22 MR. SIMON: It was faxed on Monday.

23 MR. COTTINGHAM: If I may at this point --

24 MS. KING: Could you speak up?

25 MR. COTTINGHAM: Sure. If I may at this point,
26 since we have come to that issue, the letter is not timely

1 under the rules.

2 MS. PRUITT: It would need to be waived. We

3 understand that. Thank you.

4 CHAIRPERSON REID: Is it in the package?

5 MS. PRUITT: Yes.

6 MS. KING: Is this it? The letter of July --

7 oh, no, it is July 14.

8 MR. SIMON: Yes, that is the correct one. that

9 is the one.

10 MS. KING: "Dear Board Members, Marquette

11 University is requesting a special exception..."

12 CHAIRPERSON REID: Did that come today?

13 MS. PRUITT: No. It is in your package.

14 MS. KING: No, it was given to me today.

15 MS. PRUITT: It should be in your supplementary

16 package.

17 MS. KING: But it may have been in another

18 package as well.

19 MS. PRUITT: Because your packages go out on

20 Friday. So anything after Friday has to be put in a

21 supplementary package to give to you today.

22 MS. KING: But it was faxed over on Monday --

23 this copy was faxed over on Monday, July 19?

24 MR. SIMON: Yes. It came with a request that

25 the rule be waived in as much as the chairperson misunderstood

26 that --

1 MS. KING: Yes, that is here too.

2 MR. SIMON: Right.

3 CHAIRPERSON REID: The chairperson

4 misunderstood what?

5 MS. KING: The request for a waiver.

6 CHAIRPERSON REID: The chairperson

7 misunderstood what?

8 MR. SIMON: That he should have faxed it as

9 opposed to bringing it back to the ANC office.

10 CHAIRPERSON REID: Oh, I thought you were

11 referring to me.

12 MS. KING: No, the chairperson --

13 CHAIRPERSON REID: I understand. Okay. Well -

14 -

15 MR. PARSONS: I want to continue on. Mr.

16 Simon, you are obviously here to represent this point of view

17 today.

18 MR. SIMON: Correct.

19 MR. PARSONS: What would a postponement do to

20 change this position?

21 MR. SIMON: Well, it is my understanding that

22 there are some neighbors who would like to weigh in on the

23 issue whose knowledge that we were meeting today was, shall I

24 say, compromised by the representation I made earlier that

25 they called and found out that this matter wasn't coming up

26 and also were generally unaware that this case was in process.

1 MS. KING: We could perhaps cure that by
2 leaving the record open.

3 CHAIRPERSON REID: I am sorry, we could cure
4 what?

5 MS. KING: The fact that -- what Gottlieb is
6 saying is that there may be some neighbors who didn't get
7 proper information about this hearing and who would like to
8 weigh in with their opinion. The Capitol Hill Restoration
9 Society is represented, Ms. Neal, who wrote in advance and
10 asked or party status is represented. You are here
11 representing the ANC. And it seems to me that we could leave
12 the record -- we could cure that problem with the neighbors by
13 leaving the record open. Our next decision making meeting
14 isn't going to be until the first week in September. That
15 gives them plenty of time to weigh in with their opinion.

16 CHAIRPERSON REID: And also the letter -- the
17 July 14 letter is in support of the application with
18 conditions.

19 MR. SIMON: Excuse me?

20 CHAIRPERSON REID: I said your letter -- the
21 ANC letter --

22 MR. SIMON: Yes?

23 CHAIRPERSON REID: Is in support of the
24 application.

25 MR. PARSONS: That is from 6A or 6B?

26 CHAIRPERSON REID: I don't remember. It must

1 be 6B. Do you have 6B right there?

2 MR. PARSONS: Here.

3 MR. COTTINGHAM: Madam Chairperson?

4 CHAIRPERSON REID: Okay. So 6B opposes and 6A
5 supports it. All right.

6 MR. COTTINGHAM: If I could note for the
7 record, we are actually in ANC 6A, who is in support of the
8 application, and Mr. Pernell is also here today. We are
9 adjacent to 6B, but we are actually in ANC 6A. And I don't
10 know -- would you like to raise a preliminary question, the
11 question of 6B having given proper notice of their meeting?
12 Or would you prefer that Father O'Brien talk about that?

13 CHAIRPERSON REID: Whether 6A was given proper
14 notice?

15 MR. COTTINGHAM: Whether 6B gave proper notice
16 of their meeting at which they took the vote in opposition of
17 our application.

18 CHAIRPERSON REID: I mean, we can ask. Were
19 you -- did you notify properly?

20 MR. SIMON: The issue in this case is that we
21 had a meeting scheduled for June 8, and that meeting was
22 canceled because as some of you may be aware, one of our
23 Commissioners, Dennis Dollinger, was unfortunately murdered
24 and that occurred on the Friday before our Tuesday meeting.
25 The meeting was thereupon canceled. The notice was put on our
26 door and other efforts were made to notify people of the

1 change in our meeting. I believe that we did manage to put up
2 required notification. But in any event, I believe that the
3 law does say in circumstances of that sort, less than 7 days
4 notice is allowed.

5 MS. KING: Gottlieb, do I understand that the
6 Marquette University property is not in ANC 6B?

7 MR. SIMON: The Marquette University property
8 is exactly on the north side of the boundary separating 6A and
9 6B.

10 MS. KING: You mean, it is on the other side of
11 the street?

12 MR. SIMON: It is on the other side of the
13 street, that is correct. We then count as an affected ANC
14 rather than the ANC in which it was located.

15 MS. PRUITT: So, therefore, the Board does not
16 -- it is not granted great weight.

17 CHAIRPERSON REID: Okay. Let us try to move on
18 from this point, the preliminary matter. The issue on the
19 floor is whether or not we should proceed today. I think it
20 would be my take on this that we would go ahead and proceed
21 with it. As Ms. King suggested, you'd have ample time to meet
22 and then to weigh in by submitting a written -- putting a
23 written report on your position that we would pass at a time
24 that we would actually have the meeting to decide this case.

25 MS. KING: Well, we have their written report.
26 What he is considered about is the neighbors.

1 CHAIRPERSON REID: Well, he -- that is the whole point
2 I am making.

3 MS. KING: And additional public comment.

4 CHAIRPERSON REID: He is saying that they want
5 to have the time to get additional comments and submissions to
6 submit to us.

7 MR. SIMON: Well, I am saying their opportunity
8 to participate today or to be here today has been compromised.

9 CHAIRPERSON REID: Well, not if they can submit
10 it in writing, Mr. Simon.

11 MR. SIMON: No. You will be able to hear from
12 them, but their ability to be present at this hearing will
13 have been, as I say, compromised.

14 CHAIRPERSON REID: Well, that -- I don't know
15 if that -- whether or not it is compromised or not. The most
16 important thing is that they have the opportunity to be able
17 to have their view or their opinion aired to us, which they
18 will be given that. They would be afforded that opportunity.

19 MR. SIMON: I understand.

20 CHAIRPERSON REID: And I think under the
21 circumstances and given the fact that Marquette is here and
22 ready to go and has flown in, we would try to be fair about
23 this and give them an opportunity to submit and to go ahead
24 with the case today. That would be my take on it. I don't
25 know what the other Board members -- how you feel about this?

26 MS. KING: I agree.

1 MR. PARSONS: Agreed.

2 MR. COTTINGHAM: One point of clarification. I
3 anticipate we could also have neighbors submit letters if the
4 record is open so that it could --

5 CHAIRPERSON REID: If the record is open, they
6 will give -- and we will give time lines for the submission of
7 their responses or whatever.

8 MR. COTTINGHAM: Okay.

9 CHAIRPERSON REID: We have until September --
10 our first meeting in September in order to do all that. So
11 there is ample time.

12 MR. COTTINGHAM: Thank you.

13 MR. SIMON: Thank you.

14 CHAIRPERSON REID: All right. Are there any
15 other preliminary matters? Does staff have any preliminary
16 matters?

17 MS. PRUITT: No. We would just like to let you
18 know that the third case in the afternoon, application 16472,
19 I believe all the participants are here.

20 CHAIRPERSON REID: Okay. Are you all ready
21 now? Can you come forward at this time to be taken first?

22 MR. LYLES: Yes. Yes, we are ready.

23 CHAIRPERSON REID: All right, then come
24 forward. Mr. Hart will call the case.

25 MR. HART: Case No. 16472 of the Holy Christian
26 Missionary Baptist Church for all People, pursuant to 11 DCMR

1 3107.2, for a variance from the rear yard setback requirements
2 of Section 774.7; and a variance from the number of parking
3 space requirement of Section 2101.1, for proposed new
4 construction of a church for a 812 seating in a C-3-A premises
5 at 4000 Benning Road, N.E., Square 5081, Lot 52. Would those
6 persons planning to testify, please stand and raise your right
7 hand.

8 (WITNESSES ARE SWORN.)

9 MS. PRUITT: Madam Chair?

10 CHAIRPERSON REID: Yes.

11 MS. PRUITT: Staff has just one preliminary
12 matter on this and that is that the property was posted two
13 days late. For the record, we would just like to let you know
14 that.

15 CHAIRPERSON REID: Okay. Should we waive the -
16 -

17 MS. PRUITT: Yes, you need to deal with that.
18 However, it was posted -- it was posted for 13 instead of 15
19 days. It was posted, but it was just two days late.

20 CHAIRPERSON REID: Unless there are any
21 objections from anyone here, then we can waive that
22 requirement that it be posted 15 days in advance of the
23 hearing date.

24 MS. PRUITT: Okay. And I believe there is
25 another issue. The Park Service has requested party status in
26 this case. Could you please come forward? This is the time to

1 do so. Actually, could they just sit there and request that
2 they need to just talk -- they are requesting party status.

3 MR. ROSENSTOCK: We make our presentation
4 first?

5 MS. PRUITT: No. This is still a preliminary
6 matter. We haven't gotten into the merits of the case at all.

7 MR. ROSENSTOCK: Sure.

8 CHAIRPERSON REID: Okay.

9 MR. ROSENSTOCK: Good afternoon. My name is
10 James Rosenstock representing National Capital Parks East.

11 CHAIRPERSON REID: I am sorry, sir, you have to
12 speak up. We are having --

13 MR. ROSENSTOCK: I am sorry. Good afternoon.
14 My name is James Rosenstock representing National Capital
15 Parks East in this matter.

16 MS. KING: Your address? Your home address?

17 MR. ROSENSTOCK: 13508 Harrison Avenue, Fort
18 Washington, Maryland 20744.

19 MR. MURPHY: Good afternoon, my name is David
20 Murphy. I am representing the National Capital Region of the
21 National Park Service this afternoon. My home residence is
22 7910 Woodrow Place, Cabin John, Maryland.

23 CHAIRPERSON REID: Okay. Go ahead, Ms. King.

24 MS. KING: Do you request party status?

25 MR. MURPHY: Yes.

26 MR. ROSENSTOCK: Yes, ma'am.

1 CHAIRPERSON REID: Basically, I guess you are
2 not familiar with the process. You give us the basis by which
3 you feel that you should be granted party status. That is
4 what you are here for right now.

5 MR. ROSENSTOCK: Oh, okay. Basically as the
6 adjoining landowner of the historic Fort Mahon, we request
7 party status. I am prepared to make a presentation, but I had
8 thought that that would follow the applicant's presentation.

9 CHAIRPERSON REID: Not right now. And also,
10 isn't there a federal interest, the Department of Interior?

11 MR. ROSENSTOCK: Well, yes.

12 CHAIRPERSON REID: That is what I am saying.

13 MR. ROSENSTOCK: National Park Service
14 property, historic Fort Mahon of the Fourth Circle Parks,
15 Department of the Interior.

16 CHAIRPERSON REID: And that is why you want
17 party status?

18 MR. ROSENSTOCK: It is adjoining property, yes,
19 ma'am.

20 MS. KING: I recommend that they be given party
21 status.

22 CHAIRPERSON REID: No problem with me. Okay.
23 Now.

24 MR. LYLES: Thank you, Madam Chairman and
25 Board. My name is Dean Michael Lyles, attorney for Holy
26 Christian Missionary Baptist Church, and we are here today to

1 request a variance for two restrictions -- a rear yard setback
2 restriction and a required number of parking spaces.

3 The Board of Zoning may grant a variance on
4 this lot 52, Square 5081 generally from strict application of
5 the zoning regulations to relieve peculiar and exceptional
6 difficulties or exceptional and undue hardship caused by
7 exceptional narrowness, shallowness or shape of a specific
8 piece of property at the time of the original adoption of the
9 regulation, or by reason of exceptional topographical
10 conditions or other extraordinary or exceptional situation or
11 condition on a specific piece of property. A variance may be
12 granted, however, only if such relief can be granted without
13 substantial detriment to the public good and without
14 substantially impairing the intent, purpose and integrity of
15 the zoning plan.

16 We are here today to request a variance for the
17 proposed plan for Holy Christian Missionary Baptist Church to
18 build a new church home facility in a C-3-A zone, which is
19 currently undeveloped and has always been so. The height and
20 design of the building conforms in every way to the zone plan
21 except for the rear yard setback and the parking spaces. The
22 planned use, a church, will be an integrated design of high
23 quality and multiple uses associated with providing Sunday
24 service and service to the community. The applicant hopes to
25 add value to a small area of the District that has been
26 neglected by major businesses and the government. The pastor

1 and the parishioners hope to bring additional spirit and
2 commitment to service to a neighborhood already being served
3 by the wonderful people at Marshall Heights, Metropolitan
4 Police Boys and Girls Club, and the National Park Service.
5 The organizations currently assisting the community cannot do
6 it all, however, and the applicant promises a gleaming new
7 church facility on the hill welcoming all.

8 With respect to the rear yard setback, the
9 applicant will evidence through our architect, Mr. Otis
10 Johnson here, one of our primary witnesses, the practical
11 difficulties because of the unique characteristics of the
12 subject property. He will discuss the topography, the park
13 land adjacent to the property, the location of Metro, and the
14 amount of dirt that needs to be moved and the support that the
15 design can give to emergency vehicles and not detract from
16 life, safety and health for the users in the surrounding
17 community.

18 In addition, compliance with the applicable
19 area restrictions would be unnecessarily burdensome. The
20 application that you should have shows the requirements for
21 12.8 feet based on the height of the building. Our
22 requirement or our design shows only 12 feet, and we will let
23 Mr. Johnson discuss the construction difficulties and the
24 economic unfeasibility of a major redesign of that small
25 space. So without any further ado, I would like for Mr.
26 Johnson to discuss the basis for the project, after

1 introducing himself and where he works. The basis for the
2 project and the rear yard setback variance that we seek. Just
3 introduce yourself.

4 MR. JOHNSON: Yes. My name is Otis Johnson,
5 and I am a principle with Design Construction Management,
6 architects and engineers, Clinton, Maryland.

7 MS. KING: I am sorry, I can't hear you, sir.

8 MR. JOHNSON: Yes, Otis Johnson. I am a
9 principle with Design Construction Management Team. We are
10 architects and engineers based in Clinton, Maryland.

11 MS. KING: And your home address?

12 MR. JOHNSON: 8910 Bluffwood Lane in Fort
13 Washington, Maryland.

14 MR. LYLES: And, Mr. Johnson, describe the
15 basic design of the church and how the rear yard setback comes
16 into play.

17 MR. JOHNSON: I have before you here a site
18 plan. I know some of you are a little ways away here, so I
19 have outlined in yellow to indicate the property line. The
20 building is located -- as you see this line here, it is into a
21 hill. This building is built into a hill that rises from
22 roughly 78 feet above sea level at the sidewalk and bed and
23 road, up to 102 feet. So as you can see, there is quite a
24 slope there. And our proposal is basically building this
25 building into that hillside. This building is composed of
26 about 13,000 square feet on each floor. The total building is

1 29,000 square feet. The lot coverage here is roughly 250 x
2 100 or about 25,000 square foot lot. There is adjacent to
3 this property park land to the right -- National Park Service
4 property -- and to the rear National Park Service property,
5 all of which is undeveloped, of course. There is one
6 residence to the left. The neighborhood is generally
7 commercial. There is a funeral home across the street, a boys
8 and girls club, and also a shopping center right across the
9 street.

10 This church is proposed to seat 670 worshipers.
11 We were only able to provide, because of the space
12 requirements of the church, we were only able to provide 16
13 parking spaces on site. However, as recently as last week, we
14 had some conversations with city officials of the Highway
15 Department, who suggested that we cut another entrance to make
16 two entrances into Benning Road, which we would have liked to
17 have done at first. This change we believe will allow us to
18 increase the parking spaces maybe to 20 and maybe even 26.

19 MR. LYLES: Mr. Johnson, deal specifically with
20 the rear yard setback right now and the difference between the
21 12.8 feet and the 12 feet.

22 MR. JOHNSON: Okay. Well actually what we are
23 talking -- because of the height limitation, we are 12 feet.
24 We are short on that rear yard by 8 inches. We are short in
25 the setback 8 inches. It is a fact -- I don't know how I can
26 describe that any more. I don't have photographs.

1 MR. LYLES: Are there exits coming out from
2 that --

3 MR. JOHNSON: Yes, we had to provide some space
4 in the rear here to provide exits for the basement.

5 MR. LYLES: Can people come out of the building
6 safely if they had to exit?

7 MR. JOHNSON: We are providing adequate exits.

8 MS. KING: Which is the high end and which is
9 the low end.

10 MR. JOHNSON: Well, this is Benning Road along
11 here.

12 MS. KING: Okay. And that is where --

13 MR. JOHNSON: It goes up hill, up to 102 up on
14 the high end here. It continues to rise.

15 MS. KING: And where does the park come out
16 again?

17 MR. JOHNSON: Beg your pardon?

18 MS. KING: The park land?

19 MR. JOHNSON: The park land is to the right
20 side over here and to the rear.

21 MS. KING: Now your building is going to go to
22 the property line on Benning Road?

23 MR. JOHNSON: To the property line on Benning
24 Road. We have got a 12 foot setback.

25 MS. KING: We should be 12'8"?

26 MR. JOHNSON: 12'8".

1 MS. KING: Other than that, there is no problem
2 about the size of the building?

3 MR. JOHNSON: No.

4 MS. KING: Now where are the parking spaces
5 going to be?

6 MR. JOHNSON: The parking spaces are located to
7 the right side of the lot. There is an alley, a public alley,
8 that borders adjacent to the property, both on this side and
9 to the rear.

10 MS. KING: Right.

11 MR. JOHNSON: That alley currently is
12 undeveloped. The church proposes to improve that alley -- to
13 actually build the alley. The alley is just actually
14 designated --

15 MS. KING: Do you have permission from the
16 Department of Public Works?

17 MR. JOHNSON: We are working with them. We are
18 working with Public Works now and there doesn't appear to be
19 any problems. It is just a matter of some small details in
20 terms of how we manage the storm water.

21 MS. KING: Now in the various papers that we
22 have received, there are various numbers as to the amount of
23 parking that you would have to have or that you should have
24 for this project.

25 MR. JOHNSON: Right.

26 MS. KING: I have seen the number 31, 66 and

1 82. What is the number that should be required? How many --
2 what kind of a variance are you asking for?

3 MR. LYLES: We can deal with that, ma'am.

4 MS. KING: Well, he mentioned parking and I
5 would like to hear about parking.

6 MR. LYLES: Okay, sure.

7 MS. KING: I mean, he was showing me where it
8 was. You've got 16 spaces.

9 MR. JOHNSON: We have got 16 spaces here, which
10 we believe because of some recent changes we will be able to
11 increase that to 25.

12 MS. KING: But that is way off the number that
13 you should have.

14 MR. JOHNSON: Yes. By zoning, based on 812
15 spaces, we will need roughly 82 parking spaces.

16 MS. KING: Okay. Now what is the capacity of
17 this building? I see scratched out 812, because you said it
18 was going to be a building for 670.

19 MR. JOHNSON: Well, 670 is the first phase of
20 this building. We are planning for a future balcony at some
21 point which will house another 142.

22 MS. KING: So in fact I can now cross out 670.
23 You are building a facility for 812 people?

24 MR. JOHNSON: 812 people.

25 MS. KING: And for 812 people, how many parking
26 spaces should you have?

1 MR. JOHNSON: We should have 82 based on the
2 ratio of one per 10.

3 MR. LYLES: One of the things that Mr. Johnson
4 will be able to talk about is the number that was submitted in
5 the application is based on what we hope will be the Board's
6 using its authority to reduce the number of spaces.

7 MS. KING: From 82 to 16?

8 MR. LYLES: Well, under 112108.2, the Board has
9 the authority --

10 MS. KING: Sure, we have the authority to do
11 it, but it is a big jump.

12 MR. JOHNSON: Well, it is a big jump --

13 MS. KING: Therefore, at some point in your
14 presentation, you are going to tell us where those other 70
15 cars go, right?

16 MR. LYLES: Yes. Mr. Johnson was a little
17 precipitous in mentioning the parking.

18 MS. KING: No, I raised it. Go ahead.

19 MR. LYLES: Okay. So we are going to talk
20 about it, but we wanted to break it down into two components.
21 The rear yard setback, to give you a full picture of that, and
22 then as he finishes that, we will talk about the parking.

23 MS. KING: Okay.

24 MR. JOHNSON: Okay. What I might -- and I
25 think Mr. Lyles will probably go into this in a little bit
26 more detail -- but we are assuming -- this is a C-3-A zone and

1 there is possible on-street parking available. There is a
2 Metro station. The Benning Road station is roughly -- it is
3 about 900 feet away, and I think the zoning regs allow for 800
4 feet. So we are just slightly over that 800 foot limitation to
5 the Metro station. There are shopping centers and other
6 parking directly across the street that I will let Mr. Lyles
7 address in terms of the status of the parking arrangement
8 agreements with the people in the neighborhood.

9 MR. LYLES: While we are on parking, what were
10 the special considerations with respect to the topography of
11 the lot and the parking that you can provide?

12 MR. JOHNSON: Well, we were limited in the
13 sense that because this is on a hillside, we had to build the
14 parking in the terraces. So we weren't able to flatten the
15 site out. Right now, we are requiring some retaining walls as
16 you might imagine around that parking lot to accommodate the
17 use of the terraces. We don't plan to cut all of the fill out
18 of that hill. We want to nicely terrace it so that it will
19 blend into the surrounding conditions. And since it is a hill,
20 we don't want to turn out and make a large retaining wall. So
21 we are terracing the parking to help it blend into the area.

22 Now in terms of -- I think the other issue
23 would be how we are dealing with the parking, as you addressed
24 it.

25 MR. LYLES: Talk about your discussions with
26 the traffic division and what effect you think a discussion

1 with them can have on the traffic coming in and out of the
2 parking lot.

3 MS. KING: Do you have a traffic consultant's
4 report?

5 MR. LYLES: No, we don't. We just talked to
6 traffic and Mr. Otis Johnson will tell you about that.

7 MR. JOHNSON: Well, we had some conversations
8 with traffic. We thought because of the traffic --

9 MS. KING: You mean with the Department of
10 Public --

11 MR. JOHNSON: The Department of Public Works.

12 MS. KING: I am sorry, I thought you had a
13 traffic consultant. Go ahead.

14 MR. JOHNSON: Okay. Normally if this were a
15 high traffic area, they would not allow for two entrances into
16 a major thoroughfare. So, therefore, our initial design
17 included only one entrance. But after reviewing it with the
18 Highway Department and Public Works, they recommended that we
19 bring in two entrances, which is in my opinion that they don't
20 expect heavy traffic in that area, especially on Sundays.
21 They are going to allow us to put another entrance in there
22 and that is the thing that is going to allow us to redesign
23 the parking lot to accommodate 25 cars.

24 MR. LYLES: And, Mr. Johnson, talk about the
25 bus stop at the entrance and the handicap drop-off, please.

26 MR. JOHNSON: Okay. Because of the first floor

1 elevation -- we are making the first floor elevation of the
2 building identical to the sidewalk elevation. There will be
3 direct handicapped access from the sidewalk directly into the
4 building. There is also a handicap drop-off up here on the
5 parking lot, which will be able to accommodate people with
6 wheelchairs or other handicapped people who can't be dropped
7 off at this level. We are providing an elevator in the
8 building to access between the two floors.

9 MR. LYLES: Do we have appropriate handicap
10 spaces?

11 MR. JOHNSON: We are accommodating. There are
12 sufficient handicap spaces.

13 MR. LYLES: Okay. Now I would just like to
14 have Pastor Young discuss a little bit about the church and
15 why this requirement for 82 will be obviated somewhat by the
16 church's initiatives in providing some services not only to
17 the community but also to the individuals that will be
18 parishioners at the church. Talk a little bit about the
19 history of the church and how you got to this point, Pastor
20 Young.

21 MR. YOUNG: I want to thank the Zoning Board
22 for allowing us to come. I am Pastor Steven Young, Pastor of
23 the Holy Christian Missionary Baptist Church. We are
24 presently at 601 50th Street, N.E., which is the national
25 progressive headquarters, which is the chapel of the
26 headquarters and where we hold our services. Our initial

1 starting date was we started in October of 1992, at the
2 Zelch's Banquet Facility, which Ms. Zella Worsley is here in
3 support of what we are doing. We stayed there for about three
4 years and then we moved to the progressive headquarters, where
5 we are presently holding our services.

6 One of our trustees saw this sign up where it
7 said the property was vacant. We did some investigating and
8 found out the property was available to do some building on.
9 Trustee Allen is here. So we were able to secure the
10 property. I hear the gentlemen talking about our parking. We
11 have a very young church. God gave me a vision to start this
12 church and try to get some of the kids off the streets and out
13 of neighborhoods and out of the crime system so that we could
14 be an effective entity in our church. Right now in our
15 church, we have NA, which is on Tuesday.

16 MR. LYLES: What is NA?

17 MR. YOUNG: NA is rehabilitation for drug and
18 drug users. We also have AA, which is alcohol abuse, and that
19 is very Tuesday. We also every second and fourth Saturday, we
20 preach on the Street up on Nannie Helen Burroughs Avenue,
21 which no other church is doing that.

22 MR. LYLES: Now about the composition of the
23 church, how many of your parishioners actually drive to the
24 church and how many actually walk or live in the neighborhood?

25 MR. YOUNG: Well, the advantage of our church
26 is that there is a bus stop in front of our church where we

1 are now. Not only is there an advantage here, but at the new
2 location there is also a bus stop in front of the church.
3 About 50 percent of our people drive. The other 50 either ride
4 motorcycles or bicycles or they ride the bus. So because the
5 bus stop is right in front of our church, that gives them the
6 opportunity to come. The oldest person at our church is
7 something like 60. Our youngest are ages from 18 to 21 to 33.
8 It is a real young church and all of them do not have
9 vehicles. They either get a ride, get dropped off and then
10 picked back up, but the bus is the help.

11 MR. LYLES: Talk about your plans for a shuttle
12 service, if any.

13 MR. YOUNG: Well, once we get the new church
14 built down on Benning Road, the Metro Subway, which is on
15 Minnesota Avenue, which they call the Minnesota Avenue line,
16 we have two vans which can pick up and bring those person who
17 are getting off the subway to the church and then take them
18 back to the Metro stop.

19 MR. LYLES: Talk about the investigation into
20 buying property around the church for additional parking off-
21 site.

22 MR. YOUNG: Well, we discovered that there were
23 some vacant properties on Benning Road, some vacant houses
24 that have been there for years, which I felt the neighborhood
25 looked kind of bad. So our investigation now is to get that
26 property bought so that we can use it for additional parking.

1 It is across the street from our property that we have now,
2 which those houses have been vacant, from what the neighbors
3 tell me, 10 to 20 years. And so while we are doing our work
4 trying to find out who the property belongs to, we want to get
5 that property and tear it down and make it for additional
6 parking, which will probably help our church as we continue to
7 build what we are doing on Benning Road.

8 MR. LYLES: What discussions did you have with
9 anybody in the community with respect to the parking
10 agreements for short-term that we could use parking in their
11 facilities? Who did you talk to?

12 MR. YOUNG: Well, we talked to Stuart Funeral
13 Home. We talked to the Safeway. We even talked to the Girl
14 and Boy's Club about using their facilities for parking on
15 Sunday, which we would only need parking from 8:00 to 2:00.

16 MR. LYLES: What did you find out once you
17 talked to the Boys and Girls Club? Who owned that lot next to
18 the Boys and Girls Club?

19 MR. YOUNG: Oh, I can't remember the exact
20 name.

21 MR. LYLES: The Park Service.

22 MR. JOHNSON: Was it the Park Service?

23 MR. LYLES: You told the Board what you
24 remember.

25 MR. YOUNG: It was the Park Service, yes.

26 MR. LYLES: And so did you have conversations

1 with the ANC with regard to the church coming into the
2 community?

3 MR. YOUNG: Yes. And from all indications,
4 even when I talked with neighbors, nobody had a problem with
5 that, the property going up. Because I do attend community
6 meetings. In fact, we had a meeting just last month at Ms.
7 Zella Worsley's place, which is at Nannie Helen Burroughs
8 Avenue, with the Marshall Heights president. And they were
9 talking about how excited they were about building a church on
10 Benning Road and they didn't see any problems with it. So the
11 ANC and the neighborhood -- a couple of people were concerned
12 about churches being built and that kind of thing. They
13 wanted to know why we needed another church on Benning Road.
14 Well, there are only four churches on Benning Road total, and
15 our church will be the fourth one. I looked at it. Trinidad
16 is on Benning Road and 17th, and then they have three other
17 churches. Across East Capitol Street, there is another church
18 across from Fort Chaplin, and then we would be the fourth
19 church. So there is a need because of what we are doing and
20 our outreach.

21 MR. LYLES: What is the bulk of the use of the
22 facility going to be used for?

23 MR. YOUNG: Well, our intent is to have before
24 and after care, senior citizens care, daycare. We still want
25 to do our outreach feeding. We will adopt a family. Those
26 persons who have been locked up and incarcerated, we adopt a

1 family. We give toys to the kids. We started off by feeding
2 at Thanksgiving and Christmas and the Lord spoke to me and
3 said that is not enough. So now we feed quarterly. Every
4 three months, we get out and advertise and we get people to
5 come. We witness to them and feed them and then we clothe
6 them. We have a clothing ministry. The sisters take the
7 women if they need baths or whatever, and wash them up. The
8 men take the brothers and wash them up and give them clothes
9 and what have you. The thing is that a church is not supposed
10 to be just sitting there for advertisement. It is supposed to
11 be ministering. Not to just be done on Sunday morning. It is
12 an outreach, where we go out to compel others.

13 MR. LYLES: Now how does this affect the
14 parking in your current neighborhood, all of these outreach
15 programs?

16 MR. YOUNG: Well, right now we have parking at
17 the progressive headquarters where we park on the street. The
18 police department -- in fact, we have police officers in our
19 church to make sure that we are parking legally. And then we
20 park up on the hill at the school because it is closed on
21 Sunday and during the week. So we have additional parking
22 because our services, when they start at 7:30 or 8:00, the
23 school -- Nanna Ambrose is closed and everything else is gone,
24 so we can park up there.

25 MR. LYLES: Okay. Mr. Johnson, could you
26 enlighten the Board about the economic feasibility of adding

1 the number of spaces that are required over what we are asking
2 for? What would that require in the redesign of the facility
3 and/or the parking lot?

4 MR. JOHNSON: Well, the only way we could
5 consider accommodating sufficient cars on that site and still
6 accommodate the church program would be a parking garage.
7 Certainly that would be at about \$10,000.00 per car for
8 parking.

9 MS. KING: How much?

10 MR. JOHNSON: \$10,000.00 per car would be
11 prohibitive for the church to consider as an option. The
12 other option to accommodate the parking would be to reduce the
13 size of the church, which then we would not be able to
14 accommodate the church's programs.

15 MR. LYLES: What are the costs, if any,
16 associated with a change in redesign that you just talked
17 about?

18 MR. JOHNSON: Well, we are probably talking in
19 the neighborhood of \$10,000.00 -- \$9,000.00 or \$10,000.00 to
20 redesign the entire structure to accommodate the required
21 parking.

22 MR. LYLES: What about the rear yard setback?
23 Is there a cost associated with redesign if the Board does not
24 grant the variance?

25 MR. JOHNSON: There would be a slight
26 structural cost due to redesign, but that could be

1 accommodated without a major problem.

2 MS. KING: With respect, sir, I don't think
3 that you can justify a peculiar difficulty by the fact that
4 you purposely designed something that needed a variance. I
5 mean, that is a self-imposed hardship. So that the cost and so
6 forth is not an argument in favor of a hardship that is
7 imposed upon you by the land. That is a self-imposed
8 hardship.

9 MR. LYLES: What about the -- go over again the
10 topographical features with respect to increasing that side.
11 Are there any things the Board needs to know with regard to
12 how the topographical features allow for the type of building
13 which you have designed?

14 MR. JOHNSON: No, I don't -- I think I have
15 covered that pretty much. I don't think -- I can't see anyway
16 I can add to that.

17 MR. LYLES: Okay. We have several witnesses, I
18 think, who are signed up to offer comments also.

19 CHAIRPERSON REID: Okay. Let me ask a couple
20 of questions. You said that -- this is to Pastor -- I am
21 sorry, your name?

22 MR. YOUNG: Young -- Pastor Young -- Steve
23 Young.

24 CHAIRPERSON REID: That you had inquired about
25 trying to obtain a lot across the street?

26 MR. YOUNG: Yes, ma'am.

1 CHAIRPERSON REID: The property?

2 MR. YOUNG: There are two houses there.

3 CHAIRPERSON REID: Okay. And then you wanted to

4 raise those houses to make a parking lot?

5 MR. YOUNG: Yes, ma'am. Both of them are

6 vacant. They are empty houses.

7 CHAIRPERSON REID: And how far have you gotten

8 with that process?

9 MR. YOUNG: Well, we have found out that they

10 were I guess in tax default. So we are just trying to figure -

11 - that is still a year process, even after we secure them.

12 There is the process of getting them. There is a house that

13 is not occupied and then there is a lot next to them. We are

14 trying to get three lots and we are trying to do it together

15 so that we can -- when we go over, we want to do one project.

16 So that the parking is feasible for what we might need.

17 MS. KING: What is the zoning of those three

18 lots? Are you going to have to come back to this Board to get

19 permission to build a parking lot?

20 MR. YOUNG: We probably will.

21 MR. LYLES: Is there a lot already there that

22 the church looked into?

23 MR. YOUNG: Oh, yes. There is a lot there that

24 is vacant next to the two houses.

25 MR. LYLES: And is that -- what is the position

26 of that lot? Is that near the street? Are there other

1 parking lots that the church looked into or spaces that
2 currently have no houses around them?

3 MR. YOUNG: Well, we looked at Stuart Funeral
4 Home for parking, but it just didn't -- they just didn't want
5 to comply with what we needed to have done at this time.

6 MR. LYLES: What about the parking space next
7 to the Boys and Girls Club, the Park Service? Is there a lot
8 available there?

9 MR. YOUNG: There is a lot there as well. A
10 lot there as well.

11 MS. KING: Is it an existing parking lot or
12 where you would have to come back to get permission to build a
13 parking lot?

14 MR. YOUNG: Are you talking about where the
15 houses are?

16 MS. KING: No, I am talking about the Park
17 Service and the Boys and Girls Club?

18 MR. YOUNG: Oh, no, ma'am. No, no, no.

19 MS. KING: There is parking there now?

20 MR. YOUNG: Yes, ma'am.

21 MS. KING: But they have not made an agreement
22 with you to allow you to park there?

23 MR. YOUNG: No. I mean, we want to be
24 neighbors. I mean --

25 MS. KING: I understand. But what I am saying
26 is that you don't have -- what you have is 16 or possibly 20

1 parking spaces.

2 MR. YOUNG: Yes.

3 MS. KING: And you are required to have 82.

4 MR. YOUNG: Yes.

5 MS. KING: And there is no place except on the

6 street to dump the other 62 cars.

7 MR. YOUNG: On the street, there is free

8 parking on Saturday and Sunday.

9 MS. KING: And nobody else ever parks there on

10 Saturday and Sunday?

11 MR. LYLES: Because there is nothing there.

12 MS. KING: But what about the Boys and Girls

13 Club?

14 MR. YOUNG: They park on their lot.

15 MR. LYLES: They park on the Park Service lot.

16 That is I guess the position we are in. The parking lot the

17 Park Service owns is being utilized as a parking lot. The

18 Park Service uses it for parking for visitors to their park

19 and the Boys and Girls Club utilizes it only because they have

20 no parking at their space, as we found out once we

21 investigated. Additionally, there is nothing on that side of

22 Benning Road that anyone would need to park on that side of

23 the street. Additionally, on the other side are residents.

24 MS. KING: Are there 20 spaces on your side of

25 the street?

26 MR. LYLES: Oh, there are more than 20.

1 MR. YOUNG: More than 20.

2 MR. LYLES: More than 20. Because the

3 facility takes up almost half of a block -- from the alley all

4 the way down to another alley where the house exists. Could

5 you talk about that?

6 MR. JOHNSON: Well, I don't have an overall

7 site plan. But roughly -- the footage on Benning Road is

8 roughly 240 feet or 250 feet.

9 MS. KING: And across the street from that

10 frontage is --

11 MR. JOHNSON: That is all open too. So you've

12 got about 500 feet across the street.

13 MS. KING: On Benning Road -- on the other side

14 of Benning Road, there is nothing?

15 MR. JOHNSON: There is a funeral home.

16 MS. KING: This is Stuart's Funeral Home?

17 MR. JOHNSON: Stuart's Funeral Home. And then

18 right in front of the lot are residences of

19 which --

20 MR. YOUNG: They park out back.

21 MR. JOHNSON: They park in their own lots in

22 the back. And there are several houses that are vacant. And

23 there is a vacant lot that is currently undeveloped. That is

24 about a block. And then the next block is the parking lot

25 where the Park Service has their parking and then the Boys and

26 Girls Club is at the end of that block. So we are talking

1 about two blocks in front of the Holy Christian Missionary
2 Baptist Church. No one parks on Benning Road on either side
3 at any point in the day because of all the other available
4 parking that exists.

5 MR. YOUNG: Ms. King and Ms. Reid, may I
6 address something else that just came to my mind? Stuart
7 Funeral Home is here and Marshall Heights is here. There is a
8 side street, 40th Street --

9 MS. KING: Marshall Heights what?

10 MR. YOUNG: Headquarters.

11 MR. JOHNSON: Community Development
12 Organization.

13 MS. KING: CDC?

14 MR. YOUNG: Yes, ma'am. Well, down that street
15 there is no parking. Nobody parks down there. That is -- I
16 mean, there is parking that is available.

17 MR. LYLES: And the beauty of the --

18 CHAIRPERSON REID: Okay. So have you
19 investigated --

20 MR. YOUNG: I am just saying there is extra
21 space.

22 MR. LYLES: It is public. It is on-street
23 parking. And the beauty of this particular location is that
24 there are commercial properties on the other side and
25 organizations and very few residences on either side within a
26 two block radius. So we get to a situation where people park

1 either in their driveways, behind their homes, behind the
2 parking lot, behind the businesses or organizations.

3 CHAIRPERSON REID: My question is the lot that
4 Pastor Young referred to, it is a vacant lot?

5 MR. YOUNG: Yes, ma'am.

6 CHAIRPERSON REID: And where is that in
7 proximity to your particular property?

8 MR. YOUNG: Yes, ma'am. It is about four
9 doors away from Stuart Funeral Home.

10 CHAIRPERSON REID: Okay. And you are saying
11 that you all do park on this lot or --

12 MR. YOUNG: No, ma'am. We are not -- we have
13 people working trying to secure the houses so that we can use
14 them for additional parking.

15 CHAIRPERSON REID: There is a lot on your side
16 of the street as well as across the street?

17 MR. YOUNG: No, ma'am, across the street. Not
18 on my side, across.

19 CHAIRPERSON REID: Okay, I have gotten
20 confused. I thought you were saying that that lot and the
21 houses were across the street and then that there was another
22 lot that was on the same side.

23 MR. YOUNG: No, ma'am.

24 MR. LYLES: I provided some pictures that will
25 show a different view.

26 CHAIRPERSON REID: Okay.

1 MS. KING: The zoning of the houses that you
2 intend to tear down, what is the zoning?

3 CHAIRPERSON REID: They didn't know.

4 MR. YOUNG: We didn't know. It is still under
5 investigation to find out how --

6 CHAIRPERSON REID: Okay. Now the purpose of
7 your coming to this Board is to make a case for being given
8 the relief of a variance.

9 MR. YOUNG: Yes, a variance.

10 CHAIRPERSON REID: And that requires that you
11 have to satisfy a three-prong test.

12 MR. LYLES: Yes.

13 CHAIRPERSON REID: All right. And basically
14 that is the merits of your case and that is what you need to
15 be moving into. Because that is going to be the crux of
16 whether or not you are able to have this variance granted to
17 you.

18 MR. LYLES: Well, we were attempting to show --
19 we were attempting to show that there are exceptional
20 topographical conditions which don't allow for additional
21 parking on site. We also were showing that the parking as it
22 is with Pastor Young, we can show that there is no detriment
23 to the public good. And through Mr. Johnson we showed that
24 the setback, because it is surrounded by woods and also
25 because of the access to parking and the numbers of people
26 that do not drive attending the church, there would be no

1 impairment of the intent and purpose and integrity of the
2 zoning plan.

3 CHAIRPERSON REID: Okay, wait. What is the
4 practical difficulty?

5 MR. LYLES: Well, the practical difficulty is
6 that in order to have 82 spaces, there would be additional
7 cost and there is no need for additional spaces because of the
8 numbers of people that take public transportation. And the --

9 CHAIRPERSON REID: No. What you have to
10 demonstrate is if in fact you were to comply with existing
11 zoning regulations, in other words what would keep you from
12 complying with existing zoning regulations? What is the
13 practical difficulty that you would incur as a result of --

14 MR. LYLES: Well, first of all, as Mr. Johnson
15 will attest to again, there is no room for 82 spaces on the
16 lot as it is currently configured.

17 CHAIRPERSON REID: But Ms. King -- sorry to
18 interrupt you, but Ms. King indicated to you that basically
19 what you are establishing is a self-imposed hardship. The
20 lack of the parking spaces is a function of the fact that your
21 building is so large and you can't accommodate building a lot.

22 MR. LYLES: What we are saying is not that the
23 building is so large, but if you reduce the size of the church
24 any more, you get to the situation where the church already
25 is. They are in an overcrowded situation. And reducing the
26 size of the church in order to accommodate the numbers of

1 parking that are required, it is one for every 10. That is a
2 huge requirement for a church. Because once you reduce it
3 past a certain size, you begin to get -- have problems getting
4 people into the church and you get into a standing room only
5 situation. The church is currently overcrowded. And I would
6 say that 82 spaces or even reducing the size of church as
7 currently configured reduces the capacity of the church to do
8 its ministry, which it has to do really out of space it is
9 kind of on loan for.

10 MS. KING: But what Chairperson Reid is saying
11 is that you have chosen -- if you were going to have a
12 facility for 812 people that requires 82 or approximately -- I
13 mean, the difference between the required 82 and the 16 to 20
14 that you are going to provide is huge.

15 MR. LYLES: Well, let's look --

16 MS. KING: No, wait a minute. Let me just
17 finish. What you have done is chosen a plot of land that is
18 too small to build a facility that will accommodate 812 people
19 and minimal parking. The pastor has testified that half of
20 the people drive. That would be 400 odd people. And even if
21 they came on an average of two people per car, we are talking
22 about 200 cars, right? He said that -- in his testimony that
23 50 percent of the people drive.

24 MR. LYLES: Well, I guess he means -- and he
25 will say that we have families.

26 MS. KING: Ultimately, that would be 300 to 400

1 people are driving.

2 MR. LYLES: Well, that is not true for any
3 church. Because basically what you have is people in
4 families. It is a family church. So 4 or 5 --

5 MS. KING: Okay. Say half the congregation, 400
6 people, come. And that they average 3 per car. Is that
7 reasonable? Because some of them are going to be couples
8 without children and some of them are going to be couples with
9 three children each or something like that or even to be
10 generous say four.

11 MR. LYLES: Okay.

12 MS. KING: That is 100 cars that you bring in.

13 MR. LYLES: Okay.

14 MS. KING: And you are providing 16 to 20
15 parking spaces for 100 cars, and there may be more.

16 MR. LYLES: I understand.

17 MS. KING: So, I mean, this is a big hurdle for
18 you all to get over. And to say this is the only place in the
19 District of Columbia where we can build this and it is too
20 small and therefore it is a hardship that you must take into
21 consideration doesn't fly. Because it is again, as the
22 Chairperson has pointed out, a self-imposed hardship. You
23 need a facility for 812 people and you need 82 parking spaces,
24 and you have a piece of property that will not accommodate
25 both of those things.

26 MR. LYLES: Well, we will let the pastor talk

1 about investigating other pieces of property in the District
2 and --

3 MS. KING: I am not sure that we can take that
4 into consideration.

5 MR. LYLES: Well, I think you brought it up,
6 Ms. King, that there is other available property, and I would
7 beg to differ that there is no other available property. You
8 are in a land-locked city that doesn't allow for the kinds of
9 buildings that people want to build now that host the numbers
10 of people that will go to church. And it is just -- the land
11 is just not available. And so we are where we are with
12 respect to building. The church --

13 MR. YOUNG: Our ministry is in D.C.

14 MR. LYLES: It is trying to minister here in
15 the District of Columbia.

16 MR. YOUNG: Our ministry is in D.C. You see, I
17 think that --

18 CHAIRPERSON REID: Wait a minute, Pastor Young.
19 In the alternative, then providing parking spaces across the
20 street so that you can have an accessory parking lot to go
21 with that church. But for you to attempt to obtain a variance
22 of that size is rather a stretch. It is really a stretch.
23 You are kind of pushing the envelope a lot there. I think
24 that there is no way that I can see that that -- that you can
25 adequately accommodate your congregation. And then you go to
26 adverse impacts. You are going to have parking problems,

1 traffic problems, noise problems in that community. I don't
2 see any way of getting around it unless you are able to
3 identify other parking adjacent to or across the street or
4 somewhere to accommodate those cars. I just don't see how you
5 could do otherwise. Go ahead, I am sorry.

6 MR. LYLES: Is there a -- we are in the process
7 of procuring space within what the regulations require within
8 400 feet of the church. That has not come to fruition. If we
9 do that, does the Board see any capacity or number of parking
10 spaces that it would pass muster at this junction?

11 CHAIRPERSON REID: That is a hypothetical
12 correction. We have to --

13 UNIDENTIFIED SPEAKER: On Benning Road along
14 there is parking --

15 CHAIRPERSON REID: First of all, ma'am --
16 ma'am, I am sorry, but you can't speak from the audience. But
17 you will be given an opportunity to testify and you can do so
18 at that time. We cannot allow you to just arbitrarily just
19 shout out.

20 UNIDENTIFIED SPEAKER: Well, I raised my hand.

21 CHAIRPERSON REID: No, it is not that. You
22 will be given an opportunity, but you can't do it at this
23 time.

24 MR. YOUNG: I think that we fail to look at the
25 overall picture. Now, we are not homeowners. We want our own
26 church. We are leasing -- I mean, any day the people where we

1 are now could say you've got to go. My kids don't have a
2 place to stay. I want to be a homeowner. When that property
3 came our way, it was a blessing that we got it. And we have
4 been sitting on that property for three years, paying taxes
5 and the whole nine yards that go with it. And we have just
6 gone through so much just to get it. I am telling you, we are
7 not going to give that property up because we have to build it
8 on that because that is the property that God gave us to
9 build. Now, what I am saying to us is that we have to look at
10 Metro. I mean, every day anybody who goes to church knows
11 that you can't stop visitors from visiting your church.
12 Anything new that goes up, people are going to come to see it.
13 Not just members but visitors. If you've got something to
14 offer, they are going to come. Now, Metro is around the
15 corner. My kids walk. They ride their bikes. There is a bus
16 stop in front of it. I am telling you, we are not sitting on
17 a church where my kids ride in Benzes and big cars. If they
18 do get a ride, it is about four or five or six of them packed
19 up in one car just to get there. I am only saying to us as a
20 people that we have to look at the overall picture. That in
21 order for us to be effective -- I know that our church will be
22 a help to Benning Road, because I see that we are being a help
23 to Nannie Helen Burroughs Avenue. The crime is down. I mean,
24 people are catching buses to church and from church at night,
25 when they wouldn't do it at first. I am the only pastor who
26 goes to the hood and convinces the youngsters that this is not

1 the way. 6th District and 7th District police station will
2 tell you I am the man in that town. When it comes down to
3 getting it done, nobody else does it. They don't have the
4 heart to do it. I am only saying what I have to offer --
5 senior citizen care is needed, before and after care is
6 needed, daycare is needed.

7 CHAIRPERSON REID: Pastor Young, be that as it
8 may, and your point is well taken and I agree wholeheartedly
9 with everything you are saying because it is very important
10 and it is true. Nonetheless, we still have a zoning issue to
11 get around.

12 MR. YOUNG: We can't park on the street? You
13 are telling me we can't park on the street, a free street that
14 nobody else is parking there?

15 CHAIRPERSON REID: That becomes an enforcement
16 issue that we don't have jurisdiction over. Nonetheless, what
17 you are here for today is to try to get the zoning relief that
18 you need, and this is what we have to deal with. Your
19 ministry and the competencies that you are accomplishing, it
20 is extremely applaudable for you to do that. We need it and
21 we appreciate it and we welcome that. But we have still got a
22 zoning issue that we have to address here today.

23 MR. YOUNG: And the zoning problem is this. We
24 are not going to Maryland. We are going to build on Benning
25 Road. And the thing that I am trying to get us to understand
26 is that there is no way in the world that it can't be done.

1 CHAIRPERSON REID: Well, the only solution I
2 can -- as I said before, is that you need more land. You need
3 to acquire more land --

4 MS. KING: Or make some kind of deal with
5 somebody somewhere within 400 feet for parking.

6 CHAIRPERSON REID: And that -- you see, this is
7 -- and you've got to understand in all the good that you are
8 doing, you don't want to be the cow that stuck its foot in the
9 milk. Because in the interim --

10 MS. KING: I didn't know you were a country
11 girl.

12 CHAIRPERSON REID: In the interim, if in fact
13 we grant this and then you have a colossal adverse impact over
14 there, then you've got problems. This is what we are trying
15 to avoid is causing inadvertently more problems. While you
16 are trying to solve these problems over here, you create more
17 over there.

18 MR. YOUNG: What problems do you think that we
19 will have?

20 MS. KING: Parking problems. Traffic
21 disruption. Noise of traffic. And then, of course, there are
22 all the questions that are raised about the ecological impact.
23 But traffic, parking and safety and impact on property values,
24 environmental impact of the stability of the land are all
25 questions that were raised by members of the ANC.

26 MR. PARSONS: Madam Chairman?

1 CHAIRPERSON REID: Yes.

2 MR. PARSONS: Reverend, how many parishioners

3 or members of your parish do you have now?

4 MR. YOUNG: About 500.

5 MR. PARSONS: And --

6 MR. YOUNG: And that is in two services.

7 MR. PARSONS: Two services. So how is it that

8 you need a church with 812 seats? That is the issue here. If

9 you were to build a smaller church, you wouldn't be here

10 today. And you are asking this Board to create a variance of

11 a proportion that I don't think we have ever done.

12 MR. YOUNG: Well, you know --

13 MR. PARSONS: It is not as though you can run

14 around the city and look at other churches and say, you did it

15 here or you did it there or you have done it all over the

16 city. I mean, this is extremely unusual.

17 MR. YOUNG: I want to try to accommodate for

18 what I envision. I know people are going to come. And so my

19 thing is that I want to be prepared. I mean, we are in a

20 sanctuary now which holds 350, and even now we have to have

21 chairs down the aisles. It gets so crowded that we have to

22 open the doors and they sit out on the porch. My thing is

23 that I am just envisioning that because of the type of

24 ministry that we are going to offer. People are going to come

25 and I want to accommodate. I mean, there is nobody --

26 MR. PARSONS: You have the wrong site then.

1 You just do. You need a site that will accommodate the 800
2 people, and this is not it. It might have been three years
3 ago when you started with a smaller following, if you will.
4 But it has gotten
5 -- you probably need 1,400. I am persuaded that you are a man
6 of great influence and have a great following, I am sure. You
7 may have to move on from here in two more years. I am
8 kidding. I just can't imagine what would bring us to giving
9 you this variance. I understand your argument of Metro and
10 on-street parking and so forth. But to set the precedent in
11 this city for that kind of a variance is just too much. So if
12 you were to go out and buy the properties across the street
13 and come forward with a parking proposal that made sense, it
14 may be worth pursuing. But we can't speculate on that here.

15 MR. YOUNG: So if I go back and get permission
16 from other supporters -- the funeral home, Boys and Girls
17 Club, or maybe the Safeway or whatever the case may be, which
18 they are across the street and I can get some type of
19 permission from them to park?

20 MS. KING: In writing. You need some kind of a
21 contract or something of that nature.

22 MR. YOUNG: So you would consider that?

23 CHAIRPERSON REID: Oh, absolutely.

24 MR. YOUNG: Okay.

25 MR. PARSONS: It has to be a contract of some
26 kind. It can't be that the manager of the Safeway moves on

1 and the next one throws you out.

2 CHAIRPERSON REID: That is all you have to do
3 is to provide parking.

4 MR. YOUNG: Well, I have been to them three or
5 four times and I just have to go. I don't know. We have
6 build that there. That is the vision. We can't go anywhere
7 else.

8 CHAIRPERSON REID: Well, that is the thing.
9 You see, given the fact that you are deficient in the parking,
10 then that is where your job is. Impressing upon them the
11 importance of contractually agreeing to allow your
12 congregation. Once you get those additional parking spaces --
13 and I think you are lacking 66?

14 MS. KING: No. They should have 82 parking
15 spaces and they are going to have 16 or 20 -- maybe 20. But
16 that is less than a quarter of what they need even if it is
17 20. And there are other issues that the people in opposition
18 to this case are going to be raising as well that you may --

19 CHAIRPERSON REID: So we have to listen to the
20 whole case. And then after having heard the entire case, then
21 you will see -- you will get a better picture as to what is
22 required.

23 MR. YOUNG: Okay. All right.

24 MS. KING: But I mean, we have all more or less
25 told you that the parking is an impossible impediment.

26 CHAIRPERSON REID: The rear yard setback, I

1 think that that -- you know, we could probably work that. But
2 the parking is so --

3 MR. YOUNG: Okay. We are one down.

4 MR. LYLES: We appreciate that. If the Board
5 in its judgment sees fit to grant us the rear yard setback, we
6 will work very hard at bringing back a parking arrangement
7 that you can go with.

8 MS. KING: Well, then we have to listen to the
9 other issues that are going to be raised by the people in
10 opposition.

11 CHAIRPERSON REID: I am just saying that that
12 appears it is something that is workable. Again, we have to
13 hear the whole case.

14 MR. PARSONS: Mr. Johnson, I wanted to better
15 understand the drawing before us here and the slope and so
16 forth. Do you have a cross section?

17 MR. JOHNSON: Yes. I have got a --

18 MS. KING: Here are the plans, John.

19 MR. PARSONS: No, I don't. Could I?

20 MS. KING: Oh, yes.

21 MR. PARSONS: I didn't realize.

22 MS. KING: They are in the file.

23 MR. JOHNSON: The Benning Road elevation. I'll
24 give you --

25 MS. KING: This is the Benning Road elevation.

26 MR. JOHNSON: The Benning Road elevation.

1 MS. KING: Okay. So the slope is not up from
2 Benning Road, it is up from 42nd Street?
3 MR. JOHNSON: No. Benning Road is down here.
4 MS. KING: And where is 42nd Street?
5 MR. JOHNSON: 42nd Street is --
6 MR. LYLES: To the left.
7 MR. JOHNSON: To the left, yes. To the left.
8 The hill is going up here.
9 MR. LYLES: 42nd Street doesn't go all the way
10 across into the property.
11 MS. KING: And Minnesota is to the right?
12 MR. JOHNSON: Minnesota -- no, Minnesota is --
13 MS. KING: Can you show me on this map?
14 MR. YOUNG: We are wrong. 42nd is to the right
15 and Minnesota is to the left of this building.
16 MR. JOHNSON: Minnesota is down here.
17 MR. YOUNG: That is right.
18 MR. LYLES: This is Benning Road and Stuart
19 Funeral Home is directly across the street.
20 MS. KING: And where is your plot?
21 MR. LYLES: The plot is this circle right in
22 there.
23 MS. KING: Oh, I see. It is a bunch of
24 different --
25 MR. LYLES: Yes, it is a lot of plots. So
26 Minnesota is way down here. This is an alley and there is a

1 house here and there is a street.

2 MS. KING: Okay. Maybe we can work it --

3 CHAIRPERSON REID: So this was --

4 MS. KING: So this is the house that is there?

5 MR. LYLES: Yes.

6 MS. KING: This is the house that is there and

7 you are some of this?

8 MR. LYLES: Yes, that is correct.

9 MS. KING: There is a house here. This is

10 Benning Road. And Stuart's Funeral -- I mean, here is the

11 Boys and Girls Club. Stuarts Funeral Home is here?

12 MR. LYLES: Right here. This is a lot. This

13 is vacant. This is what the pastor is talking about. And

14 there are some houses here too and there is a vacant lot here.

15 MS. KING: And where is the Safeway?

16 MR. LYLES: The Safeway is down here.

17 MS. KING: I see.

18 MR. LYLES: There is a whole shopping center

19 here.

20 MS. KING: Down here?

21 MR. LYLES: Yes. We presented the pictures

22 that showed --

23 MS. KING: Yes, but I was just trying to

24 identify it on the map.

25 MR. LYLES: This street is this street here.

26 MS. KING: Okay. So this would be Stuart

1 Funeral Home. And you are right here?

2 MR. LYLES: Correct.

3 MS. KING: Somewhere in here.

4 MR. LYLES: Right. That is it right there.

5 MS. KING: Now, does your land run to where

6 this house is?

7 MR. YOUNG: Yes. It runs right up to the lot

8 line right here.

9 MR. LYLES: There is an alley that separates

10 the property and the house.

11 MS. KING: Okay. So this in effect is your

12 property and this is the alley which doesn't exist.

13 CHAIRPERSON REID: And what is this right here?

14 MR. LYLES: That is part of the park.

15 CHAIRPERSON REID: So it is park land?

16 MS. KING: Here it is.

17 CHAIRPERSON REID: Oh, okay.

18 MR. LYLES: It is a huge area.

19 CHAIRPERSON REID: Yes.

20 MS. KING: You see, they are in here.

21 MR. YOUNG: Right. There you go.

22 MS. KING: Okay. So they are in C-3-A. And

23 there is the park. Okay, got you.

24 MR. PARSONS: I don't think that is what I was

25 interested in. How about the one labeled main entrance?

26 MR. JOHNSON: That is the main entrance off of

1 the parking lot.

2 MR. PARSONS: Yes. So to the right of your hand

3 there is the alley, is that correct?

4 MR. JOHNSON: Yes. There is an alley right

5 here.

6 MR. PARSONS: And Benning Road then is to the

7 left?

8 MR. JOHNSON: Yes, and down.

9 MR. PARSONS: So where is the property line on

10 the right side of the drawing?

11 MR. JOHNSON: Right here?

12 MR. PARSONS: Yes.

13 MR. JOHNSON: The property line is about here.

14 MR. PARSONS: And the result of your design

15 effort makes it an 8-inch encroachment, is that right?

16 MR. JOHNSON: Yes.

17 MR. PARSONS: You are 12 feet back?

18 MR. JOHNSON: Yes.

19 MR. PARSONS: 12 foot instead of 12'8".

20 MR. JOHNSON: Yes.

21 MR. PARSONS: And then I was trying to -- could

22 you go back to the plan, please?

23 MR. JOHNSON: The plan?

24 MR. PARSONS: It was the one on --

25 MR. JOHNSON: You want to see a plan?

26 MR. PARSONS: What is happening there on the

1 alley about a third of the way down the building itself?

2 MR. JOHNSON: Here?

3 MR. PARSONS: Yes, right there.

4 MR. JOHNSON: Nothing. This just identifies it

5 as a public alley. Right now it is all trees. It is not

6 developed.

7 MR. PARSONS: I am sorry, I didn't make my

8 point. On your side of the alley then, what is happening

9 midway down the building? Stairways and so forth?

10 MR. LYLES: There is a retaining wall.

11 MR. PARSONS: Oh. That is not shown on the

12 section then. Oh, okay.

13 MR. LYLES: Yes. There is a retaining wall

14 back here.

15 MR. PARSONS: And what is it retaining? Your

16 property or the public alley?

17 MR. JOHNSON: It is retaining the park land

18 property to the rear of the alley beyond and above.

19 MR. PARSONS: Oh, so you are below.

20 MR. JOHNSON: Yes. We are building into

21 -- actually, we are building into the hillside.

22 MR. PARSONS: All right. So between the alley

23 and your building then will be a --

24 MR. JOHNSON: A retaining wall.

25 MR. PARSONS: A retaining wall. So that is the

26 reason for the stairs then.

1 MR. JOHNSON: Yes.

2 MR. PARSONS: Oh, I understand.

3 MS. KING: And the alley is a full floor below
4 the retaining wall, is that it?

5 MR. JOHNSON: The alley is roughly -- give me
6 a second. The alley is about let's say 93 at this point, and
7 we are at 87.3 at the entrance to the facility.

8 MS. KING: Oh, I see. So you have to climb up
9 to it?

10 MR. JOHNSON: To go up to the alley, yes.

11 MR. PARSONS: So if you are driving along the
12 alley, on top of the retaining wall, would there be some kind
13 of a guardrail or something?

14 MR. JOHNSON: Oh, yes. Yes.

15 MR. LYLES: And know that there is not an alley
16 like you envision an alley now. It is trees.

17 MS. KING: But you are asking DPW for
18 permission to develop it?

19 MR. JOHNSON: Yes. Right.

20 MS. KING: Because it is necessary for safety
21 purposes for building this housing of 812 people that you have
22 exits in all directions and so that the emergency vehicles can
23 get around. So you have no option but to develop that.

24 MR. JOHNSON: Right. Most definitely.

25 MR. PARSONS: Okay. Now I understand. Thank
26 you very much.

1 CHAIRPERSON REID: Okay. Are there any other
2 questions Board members? I was asking if there were any
3 questions. If not, does that conclude your statement?

4 MR. LYLES: Yes, we are going to conclude here.
5 And I think based on what we talked about today, our witnesses
6 will just come back with us next time if the Board does not
7 grant us the variance.

8 CHAIRPERSON REID: Well, again, let's hear the
9 whole case.

10 MR. LYLES: Okay. Well, we have some witnesses
11 who would like to testify.

12 CHAIRPERSON REID: Oh, are they testifying with
13 you?

14 MS. KING: On technical matters?

15 MR. LYLES: No, they are not technical matters.
16 They are citizens and they are testifying on their own.

17 CHAIRPERSON REID: That is fine. In support?

18 MR. LYLES: Yes.

19 CHAIRPERSON REID: Okay. Then they will have
20 an opportunity to do so.

21 MR. LYLES: Thank you.

22 MR. YOUNG: Thank you so much.

23 CHAIRPERSON REID: Is the ANC here?

24 MS. KING: Is anybody from the ANC here? Now
25 the Park Service is a party.

26 CHAIRPERSON REID: Is there any cross

1 examination from the Park Service?

2 MR. ROSENSTOCK: No questions.

3 CHAIRPERSON REID: No questions.

4 MS. WORSLEY: Excuse me, there is supposed to
5 be someone here from the ANC. I don't understand why they
6 aren't. But I am here as a member of the community.

7 CHAIRPERSON REID: Okay. You will be given an
8 opportunity to speak. And if the ANC comes before we conclude
9 this case, I will give them an opportunity to speak as well.
10 All right, government reports? ANC? Have we got a letter
11 from the ANC?

12 MS. KING: We have a letter from the ANC. They
13 did not, however -- and I have lost it.

14 MR. LYLES: Which we have not received.

15 CHAIRPERSON REID: Oh, yes. They --

16 MS. KING: It is dated the 15th of July.

17 CHAIRPERSON REID: ANC 7D -- go ahead.

18 MS. KING: The 15th of July, they needed four
19 members for a quorum and only three members were present at
20 the meeting. Therefore, they -- however, they did raise the
21 following questions. They want us to require the applicant to
22 conduct a full impact study and share the findings with the
23 ANC 7D. The study should address the potential impact that
24 the construction would have on a) small plants and tree
25 displacement; b) soil erosion and other ecological and
26 environmental changes in the area; c) vehicular traffic

1 increases and parking considerations; d) safety and traffic
2 pattern; and e) property values of the houses in the immediate
3 area of the proposed church. The general opinion of most
4 residents present was that the community could not cope with
5 the occasional increase of traffic and individuals to the
6 neighborhood, and it is the collective opinion that the
7 variances should not be allowed. Residents cited the tax-
8 exempt status of the church as another imposition to economic
9 growth in the community. The influx of transient activity and
10 additional automobile traffic into the area by residents of
11 surrounding jurisdictions could become a nuisance. Stability
12 of the land may become threatened by major changes to the soil
13 up on the hill and could eventually effect the surrounding
14 neighborhood with respect to unstable surface and soil.

15 MR. LYLES: We would just --

16 MS. KING: You have my copy.

17 CHAIRPERSON REID: Yes, you will have an
18 opportunity to respond.

19 MR. LYLES: Okay.

20 MS. KING: But you can have my copy.

21 MR. LYLES: Thank you. I appreciate that.

22 CHAIRPERSON REID: Let me just state for the
23 record that that is an ANC report and it reflects the fact
24 that there was not a quorum present, so a vote was not taken.
25 This is basically a conclusion that they came to, but it was
26 not an official vote that was taken. And this is basically

1 being proffered to us --

2 MS. KING: As an opinion of the community.

3 CHAIRPERSON REID: Yes, as an opinion of the

4 ANC.

5 MS. KING: Are you an ANC commissioner, madam?

6 Are you an ANC commissioner?

7 UNIDENTIFIED SPEAKER: I am an opponent because

8 I live on --

9 MS. KING: But you are not an ANC commissioner?

10 UNIDENTIFIED SPEAKER: No.

11 MS. KING: Okay.

12 CHAIRPERSON REID: Now since the ANC is not

13 here and we read the ANC report --

14 MR. PARSONS: This is another ANC report. This

15 is 7C.

16 CHAIRPERSON REID: Okay, ANC 7C. Ms. King,

17 would you like to summarize that for us?

18 MS. KING: Oh, let's see. Now do we have to

19 waive this in?

20 CHAIRPERSON REID: It just came today? Yes.

21 We will so waive. We will waive the ANC report in as far as

22 the timeliness is concerned. I don't know if you have seen

23 this.

24 MR. LYLES: I haven't seen it.

25 CHAIRPERSON REID: It is dated July 20th.

26 MR. LYLES: It is not the ANC that is required

1 to present their report.

2 CHAIRPERSON REID: Well, apparently this is an
3 ANC that is in close proximity.

4 MS. KING: Again, we have no indication as to
5 whether there was a quorum present. But ANC 7C is in
6 opposition to the proposed location of the Holy Missionary
7 Christian Baptist Church. There are three or more churches
8 closely to this location. This would cause a drastic impact
9 on the community with additional traffic problems.
10 Furthermore, there are just too many churches on this side of
11 Ward 7 and in Ward 7 as a whole. We are asking that you vote
12 no in opposition to this case.

13 MR. LYLES: We will just object to both
14 letters.

15 CHAIRPERSON REID: What is that attached
16 thereto?

17 MS. KING: This is from Radiation Safety at GWU
18 and then there is something from --

19 CHAIRPERSON REID: Does this have any relevance
20 to this particular case?

21 MR. PARSONS: I think that that shouldn't be
22 attached.

23 CHAIRPERSON REID: I didn't think so.

24 MS. KING: Oh, no, it is something --

25 CHAIRPERSON REID: All right, physically the
26 ANC has a report and you can cross examine the ANC. But the

1 ANC is not here. But did you want to say something?

2 MR. LYLES: Well, we just want to object to

3 both letters.

4 CHAIRPERSON REID: First of all, you have to

5 come forward and you have to give your name.

6 MS. KING: Excuse me. It seems to me that

7 since there is nobody here to cross examine, that the

8 gentlemen should deal with this issue in his closing remarks.

9 CHAIRPERSON REID: Okay. All right.

10 MS. KING: But we have made it clear that since

11 neither indicates -- we are required to give great weight

12 under law to the advice of the ANC provided they have a quorum

13 and it was a duly constituted meeting. This is not that.

14 They have raised some concerns --

15 CHAIRPERSON REID: Or an opinion that we are

16 taking into consideration.

17 MS. KING: And we will consider them as we do

18 all community concerns, either pro or con.

19 MR. LYLES: Okay. But not given the great

20 weight that is due an ANC.

21 CHAIRPERSON REID: No. We cannot give great

22 weight.

23 MR. LYLES: Okay. Thank you. I appreciate

24 that.

25 CHAIRPERSON REID: But we will take it under

26 consideration.

1 MR. LYLES: Thank you very much.

2 CHAIRPERSON REID: Thank you. All right.

3 Persons and parties in support of the application? Please

4 come forward. How many people are here in support of the

5 application?

6 MR. LYLES: Who was provided? Ms. Worsley is

7 here and this gentleman here. We have three left.

8 CHAIRPERSON REID: Three in support.

9 MS. KING: Has everybody been sworn in?

10 MR. LYLES: Yes. They all stood up at the

11 swearing in.

12 CHAIRPERSON REID: Please come forward quickly

13 if you wish to testify. You don't have to testify.

14 MS. KING: This is their opportunity. These

15 are people in support.

16 MR. CREASEY: Excuse me, I am ANC commissioner

17 Mike Creasey from 7D-01.

18 CHAIRPERSON REID: You are just arriving?

19 Okay, I am sorry.

20 MR. LYLES: Do these folks have to go back?

21 CHAIRPERSON REID: Yes. Just sit right back.

22 Don't go too far. Let's allow the ANC commissioner to come in

23 and make his -- testify. Sir, give your name?

24 MR. HART: I need to swear him in.

25 CHAIRPERSON REID: Oh, go ahead.

26 MR. HART: Sir, raise your right hand, please.

1 (WITNESS IS SWORN.)
2 CHAIRPERSON REID: Your name and address.
3 MR. CREASEY: Michael David Creasey, ANC
4 Commissioner, 7D-01.
5 CHAIRPERSON REID: You are a single member
6 district?
7 MR. CREASEY: Excuse me?
8 CHAIRPERSON REID: You are a single member
9 district representative?
10 MR. CREASEY: That is correct.
11 MS. KING: And is the proposed church site in
12 your SMD or not?
13 MR. CREASEY: It is right abutting my SMD. It
14 is in 7D-02.
15 CHAIRPERSON REID: Okay. We have a letter from
16 -- we do have a letter from ANC 7D. Are you familiar with
17 that?
18 MR. CREASEY: Yes, I am from 7D. But my single
19 member district is 02.
20 CHAIRPERSON REID: And you have another letter?
21 MR. CREASEY: It might possibly that you had
22 from Mr. William Wright, Commissioner Wright?
23 CHAIRPERSON REID: Yes.
24 MS. KING: We just read that into the record.
25 CHAIRPERSON REID: We have just gone over that.
26 Do you have additional statements to make?

1 MR. CREASEY: What I would like to say --
2 speaking for myself, I have no problems with the church. It
3 seems like they could maybe work something out with maybe the
4 Metro parking facility that is at the Minnesota Avenue subway
5 station. They could possibly think about having a shuttle
6 from point A to point B. But in that stretch of Benning Road,
7 it would be quite congested to add a parking lot beside the
8 Benning National Park, the historic park, Fort Mahon, which is
9 part of the lists of presidents -- Abe Lincoln's Civil War
10 Forts, and it is commissioned as such. And it is also part of
11 the Fort Circle Park, which runs throughout pretty much all of
12 7D, which is Fort Mahon and Fort Chaplin and Fort Dupont. So
13 it is all connected. If anything, we should try to consider
14 maybe strengthening the attributes of the park and give the
15 citizens there something constructive they can do and take
16 their children and sit out instead of having a parking lot
17 there.

18 MS. KING: Thank you very much.

19 CHAIRPERSON REID: Thank you. Wait, did you
20 have any questions?

21 MR. LYLES: We have no questions.

22 CHAIRPERSON REID: Okay. Park Service, do you
23 have any questions on cross examination of the ANC?

24 MR. ROSENSTOCK: No questions.

25 CHAIRPERSON REID: All right. Thank you.

26 Persons and parties in support, please come forward.

1 MS. KING: The three of you come forward now.

2 Now you are on.

3 CHAIRPERSON REID: Can you try to contain your
4 remarks to three minutes? Three minutes each?

5 MS. KING: But don't feel you have to repeat
6 what anybody else has said.

7 CHAIRPERSON REID: No. Please don't be
8 redundant. If one person has said something, please don't
9 reiterate the same thing. Give a different point. Use your
10 time to have the most efficient use of the time, please.

11 MR. SMITH: My name is Allen Smith. I am one
12 of the trustees at the Holy Christian Missionary Baptist
13 Church and I live in the Ward basically.

14 MS. KING: What is your home address?

15 MR. ALLEN: My home address is 225 57th Place,
16 N.E., Washington, D.C. I think that building that church on
17 that lot at Benning Road, N.E., would be a very good thing to
18 do from my vantage point because it would offer not only
19 aspects to different community entities, but also aspects to
20 the community-wide. I think that the main concern as far as
21 the parking, looking at it from that vantage point, I know we
22 can get it done. I know we can find a way to get around the
23 parking concern regarding what the committee has made
24 relevant. I also believe that this church would be an
25 instrumental part within the city. Yes, there are three or
26 four churches within the area. I have no idea what those

1 churches are doing as far as providing support to the
2 community, but I know that Holy Christian Missionary Baptist
3 Church would do just that. They would provide support to the
4 community. They would be able to enhance the community in a
5 better fashion, I think.

6 When we purchased the land in 1995, I was one
7 of the impetus to locating that land. I basically was the one
8 who said, we have property there that we can purchase. So we
9 bought the land thinking that we could build a church there.
10 It was our hope that we would go forth and do likely. I have
11 been in the area since 1983, so I have been there about 16
12 years. And yes there is the Fort Mahon Park which is there. I
13 feel that we can work together with the Fort Mahon Park
14 people. We can also work together with the community to make
15 sure that we do what needs to be done for community support.
16 That is all I have to say.

17 CHAIRPERSON REID: Thank you.

18 MR. BELLOWS: Yes, my name is Arthur Bellows.
19 I live in the 7th District at 1012 49th Place, N.E. I am the
20 chairman of the deacons at Holy Christian Missionary Baptist
21 Church. And I just simply wanted to say that this church is a
22 great impact to the young people. I know right behind the
23 property you had that vacant school, Woodson Junior High,
24 which also has a parking space. So maybe -- I don't know who
25 is in charge of that parking space. Just like they said, we
26 can use the Metro and run a shuttle. You can also park on

1 that school parking lot. That school is not being used. With
2 the Park Service, I never really even see no activity or
3 anything going on in the Park Service. I have been there -- I
4 have lived in D.C. all of my life. So on behalf of the
5 church, like it has already been said, this church is a very
6 helpful church to the community. It would help the community
7 if given the opportunity. They have shown that and they have
8 proven that. I am quite sure they will have no problems
9 working out with neighbors or the rest of the commercial sites
10 there. We can all work together if given a chance.

11 CHAIRPERSON REID: Thank you.

12 MS. WORSLEY: Good evening. My name is Zella
13 Worsley and I am a member of Purity Baptist Church, the
14 Reverend J. Terry Wyngate is my pastor. I met Reverend Steve
15 Young --

16 MS. KING: Excuse me, would you give us your
17 home address, please?

18 MS. WORSLEY: 5373 Chillum Place, N.E. 20011.
19 First, we built the Yumosha Drug Clinic about six years ago
20 and Providence Hospital runs that program. And at the time, I
21 guess about six years ago, there seemed like there was so much
22 killings and it seemed like I was always going to a funeral.
23 I met Reverend Steve Young when he was preaching to the youth
24 at a funeral home and he was trying to convey to them that it
25 is time to stop this killing and what they were doing and they
26 seemed to be listening. And I said, Lord, this maybe is the

1 vehicle that I have been looking for to see if I can help stop
2 some of this crime. So I approached him, but I had a hard time
3 getting to him because of the youth that was around him. So I
4 went all the way to the grave site and I asked him -- and
5 plus, we had purchased a banquet hall out in Northeast there,
6 and I asked him, don't you want to start your church and start
7 seeing if you can speak to some of these kids and bring them
8 into your church and talk to them and convince them to stop
9 shooting and killing one another and stop fooling with these
10 drugs? So he said he would think about it, because he was
11 like an assistant pastor somewhere else. But he really wasn't
12 interested at that time.

13 So I went to another funeral and I met him
14 again and I said we've got to help, we've got to do something.
15 I said, this drug treatment clinic is just not enough. So I
16 was convinced to talk to him. So finally when I met him
17 again, he said I have been looking for you. He had lost my
18 address and phone number, because I gave it to him. And so I
19 convinced him to come and start at my banquet hall and start
20 seeing what he could do to these kids. And sure enough, he
21 started on a Sunday morning, and he has drawn these kids. You
22 should just go and look. They are not old folks like me.
23 They are young children with children, children, children.
24 This is what we need. Somebody to get through to these
25 children. You know, and this man has been a real help. Just
26 go and see what he is doing to help stop some of this killing.

1 And I do believe he has hope. Because in the time that I have
2 brought him to this church, it seems like some of it has
3 stopped. That is all I have to say.

4 CHAIRPERSON REID: Thank you. Thank you very
5 much. Just one second, please. Any cross examination of
6 these witnesses?

7 MR. ROSENSTOCK: No.

8 CHAIRPERSON REID: Thank you. Is there? Cross
9 examination?

10 MR. CREASEY: Not so much a cross examination
11 just a --

12 MS. KING: Come forward.

13 CHAIRPERSON REID: No. No. This is the time
14 for cross examination and you have to ask them questions. You
15 can't speak at this time.

16 MR. CREASEY: Okay.

17 CHAIRPERSON REID: Thank you.

18 MR. CREASEY: The children and so forth, when
19 they were in --

20 CHAIRPERSON REID: Do you have a question? Do
21 you have a question here?

22 MR. CREASEY: Yes.

23 MS. KING: Relating to what they have just
24 said.

25 MR. CREASEY: Yes.

26 CHAIRPERSON REID: All right. Come on. Come

1 forward so they can hear you. Give your name.

2 MS. KING: And you have to identify yourself

3 for the reporter.

4 MR. CREASEY: ANC Commissioner Michael David

5 Creasey, 7D-01. The area in question that they are referring

6 they are from is over in 7C, and the people that are pretty

7 much in that area where they are talking about is 7C. That

8 has nothing to do with 7D. It would be nice if you could put

9 that --

10 MS. KING: A question.

11 MR. CREASEY: The question is why don't you put

12 the church in 7C, because we have all worked on the Nannie

13 Helen Burroughs task force that Councilman Shavers had

14 proposed, and there is a lot

15 of --

16 MS. WORSLEY: If you can find a space there, we

17 will.

18 MR. CREASEY: There is a lot of space. There

19 are a lot of buildings --

20 CHAIRPERSON REID: The question has been

21 answered. That is it. Thank you. You made your point.

22 Thank you. Thank you very much. Persons and parties in

23 opposition please come forward.

24 MS. KING: Wait. Did the Park Service have any

25 questions for these?

26 MR. ROSENSTOCK: No.

1 CHAIRPERSON REID: The Park Service, you are in
2 opposition?
3 MR. ROSENSTOCK: Yes.
4 CHAIRPERSON REID: Okay. Come forward.
5 MS. KING: Maybe we will hear from the
6 community first.
7 CHAIRPERSON REID: Are you in opposition?
8 Well, come to this table. All right, again, we ask that you
9 try to keep your remarks to around three minutes and please
10 don't be redundant. Your name and address, please.
11 MS. JOHNSON: My name is Ruth Barbara Johnson.
12 CHAIRPERSON REID: You have to speak up, Ms.
13 Johnson, because we don't have a sound system here.
14 MS. JOHNSON: My name is Ruth Barbara Johnson.
15 I live at 15 42nd Street, N.E., about two blocks from the
16 church. The traffic is what I am concerned about. We cannot
17 control our churches for people coming to different functions.
18 Benning Road is a four lane highway and you have buses and
19 cars and there is houses on one side of the street. And I am
20 concerned about the traffic. People will double park. I
21 don't care how many single spaces they have, they will double
22 park, which will cause problems as far as I am concerned. And
23 that area is heavily traveled. I have been in that area for
24 35 years and I have seen the growth, and I think it should be
25 given some heavy consideration with the traffic especially.
26 And with 800 people in a church, you can rest assure that

1 there is going to be oodles of cars and oodles of people and
2 you cannot control that when people are coming to church. And
3 with all these programs that he says he is going to have, it
4 is going to be not just on Sunday. And when the funeral
5 parlor has their functions and then the Boys and Girls Club
6 has their functions, Benning Road will be jammed with traffic.
7 It is going to be dangerous. That is all I have to say.

8 MS. WILLIAMS: My name is Reverend Virginia
9 Williams. I live at 4053 Benning Road, N.E. I am directly
10 across the street from the park and right next door to me is
11 two houses. The first house is owned by my neighbor, Elsie
12 Catrell, who is in a nursing home. And adjacent to that one
13 is a house that burned down over 20 years ago and then next to
14 that is the vacant lot. I have been instrumental in trying to
15 keep the neighborhood clean. My home is a very, very nice
16 home. It has been there since 1929. I am very active in my
17 community. Reverend Young came to my house and approached my
18 family in reference to the property next door to me. I was
19 not home at the times that he came. I am in total opposition
20 to a church trying to purchase the property next door to me
21 for the purpose of a parking lot. Since I am on Benning Road,
22 there is a lot of traffic. Stuart parks on Benning Road when
23 there is an overflow, which is constant. There is a bus.
24 There is a fire department and all of that. I have no
25 objection to the church being on the hill. However, I do have
26 objections in terms of the parking because I am affected. My

1 nieces and my nephews and all of the young people that come to
2 my house will be adversely affected. I, too, am interested in
3 the property next door and some of my neighbors are interested
4 in the property next door. We talked to the Marshall Heights
5 Community Development Service, who was looking at that
6 property in terms of putting houses there, and I don't -- and
7 I think that if anything should be there, there should be a
8 some houses, not a parking lot where if I come right out my
9 back door or my side door, I would be looking right down on
10 that parking lot. And all of the neighbors -- they are not
11 here today, we will be in opposition to that parking lot right
12 outside of my door. And as I said, there was a meeting at the
13 Police Boys Club on July 9. A letter went out to Reverend
14 Young and his congregation. No one from his congregation came
15 to address us at that meeting, where the ANC commissioner was
16 there and members of the community, where we could ask him
17 questions. We asked did the letter go out to him. A letter
18 did go out to him, but no one came to address it.

19 I know that they presented proposals and all of
20 that. But in terms of actually living there, I don't think
21 that these parking spaces are going to be able to be
22 accomplished. And I definitely oppose. Now he has a right to
23 go down and try to buy the land next door to me, but I am also
24 going to be down there trying to buy the land too, because I
25 do not want this parking lot right next to my home. And my
26 home is the best home on Benning Road.

1 CHAIRPERSON REID: I hate to cut you off, but
2 you said that three times.

3 MS. WILLIAMS: Right. Well, I just want to
4 make sure --

5 CHAIRPERSON REID: We got it.

6 MS. WILLIAMS: That I am heard. And Mrs.
7 Stuart was also at that meeting and she said that she had been
8 approached by Reverend Young in terms of using her parking
9 lot, and she said that she did not wish to have her parking
10 lot used for the church members.

11 MS. KING: Excuse me, what is your address?

12 MS. WILLIAMS: My address is 4053.

13 MS. KING: Okay.

14 MS. WILLIAMS: I am right across the street.
15 The park is right in front of my house. I am adversely
16 affected. And the lots that he is talking about securing are
17 right next door.

18 MS. KING: The ones that are contiguous to your
19 own property.

20 MS. WILLIAMS: Right.

21 MS. KING: I understand. Thank you.

22 MS. WILLIAMS: And we do have parking on
23 Benning Road. At certain times of the day you cannot park on
24 Benning Road, from 4:30 to 6:00. I park on Benning Road. I
25 park my car on Benning Road overnight. And there are other
26 people that come and park their cars on Benning Road also. I

1 jotted down a few notes, but I just wanted to make sure that I
2 did bring out the main points.

3 CHAIRPERSON REID: Thank you.

4 MS. KING: Thank you very much.

5 MR. ROSENSTOCK: If there are other members of
6 the community that were waiting to testify, I can --

7 CHAIRPERSON REID: I think these are the only
8 two that were here in opposition. Are there any other members
9 in opposition -- of the community? Okay.

10 MS. KING: Madam Chair, could I suggest that
11 the Park Service, which is a government organization, should
12 be given more than the three minutes that are allotted to a
13 neighborhood?

14 CHAIRPERSON REID: How much time do you need?

15 MS. KING: He is a party to the case.

16 MR. ROSENSTOCK: I will try to be brief. We
17 have some issues --

18 CHAIRPERSON REID: Can you wrap it in five
19 minutes?

20 MR. ROSENSTOCK: I will do the very best I can.

21 CHAIRPERSON REID: Okay. Well, just -- because
22 I just wanted to make sure that everyone understands why. The
23 Park Service is a limb of the Department of the Interior. So
24 we will afford him a little bit more time.

25 MR. LYLES: Excuse me, we didn't receive one of
26 those -- whatever he is passing out to the Board.

1 CHAIRPERSON REID: Let's see, do you have
2 additional copies? The attorney for the church should have a
3 copy of whatever is being distributed.

4 MR. ROSENSTOCK: Not with me. Again, my name
5 is James Rosenstock and I am testifying for the National Park
6 Service. My colleague, Mr. Murphy, expresses his regrets.
7 His daughter is flying off overseas this afternoon and she
8 very much wanted her daddy to be there to see her off. So he
9 was unable to stay around.

10 CHAIRPERSON REID: You can adequately represent
11 the both of you.

12 MR. ROSENSTOCK: Well, I am not quite as
13 capable in terms of song and dance as Mr. Murphy, but I will
14 do the best I can. First of all, I need to say that my
15 discomfort level here right now is quite high. I am not
16 comfortable opposing a church and its good works. However,
17 that is indeed the case. The application for variances, which
18 is what we are opposing, it is clear that what we have here is
19 a building that is far too large for a site that is far too
20 small and far too steep. There are also some issues of the
21 adjoining properties. Both the residential, as you have
22 heard, and the National Park Service, which borders it on two
23 sides.

24 In the package I gave you, the first is a
25 letter from my superintendent, John Hale, opposing the
26 variances here. To synopsise that, we are really concerned

1 about initially how the applicant has gone about the initial
2 stages of this. We heard -- we were surprised in early April
3 to find that massive clearing had taken place on this site and
4 a trespass had occurred on those District right-of-way and
5 National Park Service land as well. Apparently, the applicant
6 had not done a proper survey before undertaking a rather
7 haphazard clearing of the site. A couple of days later, the
8 architect and the pastor were to the park with a request for
9 the National Park Service to provide them a written parking
10 agreement in order to get past the variances that are now
11 before you. Of course, we cannot in writing consign public
12 land for private uses.

13 We did express our concerns at that time of the
14 tree cutting of Park Service trees and the trespass on park
15 land and expressed our desire that the applicant remain in
16 close touch with us as this process went forward so that we
17 could resolve both prior issues and plan for the church. We
18 are frankly quite concerned at the scope of this project.

19 Since our letter went to the applicant saying
20 that we could not grant the parking privileges, we have not
21 heard from the applicant. Following the letter from John
22 Hales, that initial letter, asking the applicant to work
23 closely with us and explaining why we could not grant written
24 parking agreements for that kind of commitment of park service
25 land.

26 There is also a case incident record from the

1 U.S. Park Police on the tree cutting incident, and a diagram
2 that shows the properties. This is a xerox from the D.C. land
3 records, I believe. What I have drawn in green was the
4 formerly unbuilt D.C. alley right-of-way. In yellow is
5 National Park Service land above that, which was also cleared
6 during this time.

7 Running above that is the Fort Circle Park's
8 hiker/biker trail. The built portion of the alley kind of
9 loops up above actually onto Park Service land and joins this
10 hiker/biker trail. And basically in this incident the
11 applicant cleared all the way up to that point and took down a
12 number of Park Service trees.

13 I have enclosed a reprint from a book entitled,
14 "Mr. Lincoln's Forts", which documents the historic earthworks
15 that were put in around this so-called Fort Circle area of
16 Washington, D.C., the hastily constructed Civil War defenses
17 of the Union. For Mahon was the northern-most one of these
18 forts in Anacostia. It was on a promontory that guarded the
19 entrance to D.C. by the Bennings Bridge, what is known as
20 Benning Road now, and Eastern Branch Road, which is now known
21 as Minnesota Avenue. It was a critically important fort in
22 the defense of the Nation's Capital in the Civil War. Some of
23 that fort no longer exists because of playground area further
24 up. There are, however, obvious earthwork remains right off
25 of the Fort Circle Trail, and just above the applicant's
26 property.

1 If you will go to the photographs I have here,
2 this is what the property looks like from Benning Road at this
3 point, and you can see the nature of the clearing job. The
4 automobile you can see parked up in the alley is the end of
5 the built portion of the alley. Clearing went on beyond that
6 on the alley right-of-way and in the National Park Service
7 right-of-way. You will notice also that this property is not
8 posted. I know that is a technicality, but it is also
9 indicative of the level of communication that we have had.

10 The hiker/biker trail, the so-called Fort
11 Circle Trail, runs just past -- just beyond 42nd Street. The
12 Fort Circle Trail approaches the earthworks at Fort Mahon.
13 We have a sign noting that the earthworks are visible, and
14 there is a spur trail that goes directly above the applicant's
15 property and onto the historic earthworks. This is just
16 before you get past the applicant's property what the trail
17 looks like. You can see some earthworks here -- more obvious
18 earthworks. Above approximately 41st and Benning.

19 Here we have a picture taken from the spur
20 trail of Fort Circle that shows the cleared property as it is
21 now. Yours truly standing by a Park Service cherry tree of
22 pretty serious diameter that was a critical screen for the
23 Fort Circle Trail. Now the Park Service does not object to
24 the church's construction of an appropriate facility on their
25 private property, but we have serious concerns about this
26 property. Frankly, the building is far too large. The slopes

1 are steep. The land in this area is notorious for being
2 highly erosive. There plans also, if you will direct your
3 attention to the chart my friend Mr. Murphy drafted up for me
4 just yesterday evening. The Fort Circle Trail comes from
5 beyond here and then comes past -- this is the spur that takes
6 you to the earthworks. These are approximate locations of
7 some of the reigning earthworks, most likely rifle trenches,
8 that were set up to protect the approach to Washington, D.C.

9 We are very concerned about the plans of this
10 structure. The terracing -- the so-called retaining wall that
11 will be of heights between 5 and 8 and 12 feet along here.
12 Frankly, there is no room for mitigation or revegetation at
13 this point. There will be -- we are very concerned that
14 archaeologically sensitive Park Service land may be subject to
15 erosion just by the very construction of this. This is not a
16 retaining wall constructed on their property. This is
17 building into the D.C. alley right-of-way, directly abutting
18 Park Service land.

19 Basically it is a very large intrusion on a
20 very nice historical park. This is a National Register
21 Historic Places site, by the way.

22 MS. KING: Have you had a meeting with the
23 church people?

24 MR. ROSENSTOCK: Yes, we did. They came to us

25 --

26 MS. KING: They came asking for parking?

1 MR. ROSENSTOCK: Requesting parking. And we
2 discussed the issues of the clearing and expressed concern
3 about the general nature of the building and we put -- we sent
4 them a letter saying that we were concerned. We thought that
5 this could be a successful project, but they needed to work
6 closely with us.

7 CHAIRPERSON REID: The letter from your
8 supervisor John Hale addressed those issues without his
9 testimony.

10 MR. PARSONS: Mr. Rosenstock, let me
11 understand. I guess I understood this retaining wall to be on
12 the side of the alley that is on their property. In other
13 words, the road would be here, the retaining wall, and the
14 park beyond. Is it your understanding that the retaining wall
15 is abutting the Park Service property?

16 MR. ROSENSTOCK: As best I could read from the
17 blueprints, yes, sir. I see a retaining wall directly
18 abutting the National Park Service property.

19 MR. PARSONS: So then the alley would be lower
20 than the Park Service land in your scenario, rather than at
21 the same grade?

22 MR. ROSENSTOCK: That is what it appears to me,
23 yes, sir. Significantly lower. Such that without a fence, it
24 would clearly constitute a hazard to the users of the Fort
25 Circle Trail.

26 MR. PARSONS: I assume in order to construct

1 this kind of retaining wall, they would have to get permission
2 from the Park Service to go back into their land to --

3 MR. ROSENSTOCK: Well, that is archaeologically
4 sensitive land. There is not any way that we could give that
5 kind of permission.

6 MR. PARSONS: Okay.

7 MR. ROSENSTOCK: That is -- there are historic
8 earthworks from the Civil War literally a stone's throw from
9 that point.

10 MR. PARSONS: I want to make sure. You are not
11 objecting to the development of this property. The Park
12 Service isn't about to acquire it or try to bring it into park
13 land. I mean, it is zoned for use. It is just that this
14 structure is too large, is that correct?

15 MR. ROSENSTOCK: No, sir. In fact in the
16 letter, we absolutely did not oppose the construction of
17 worship facilities on private property, and indeed park land
18 is bordered by churches in many parts of this city. We enjoy
19 good neighbor relationships almost exclusively.

20 MR. PARSONS: Thank you.

21 CHAIRPERSON REID: Any other questions, Ms.
22 King?

23 MS. KING: The ANC raised the question of the
24 stability of the soil and ecological and environmental issues
25 and so forth. Do you share those concerns?

26 MR. ROSENSTOCK: Oh, absolutely, yes. The

1 soils throughout that entire portion of town are highly
2 erosive. There is lots of anomalous water springs, seeps.
3 Everybody in the area has sump pumps in their basements. Some
4 people have three or four. It is -- there are difficult
5 conditions with soils and waters there certainly.
6 Ecologically, it is -- we have very nice woods in that area.
7 Frankly, it is primarily soils and water and the great
8 potential for damage to adjoining property and erosion onto
9 other properties that would concern us.

10 MS. KING: Thank you.

11 CHAIRPERSON REID: Thank you very much. Any
12 cross examination?

13 MR. LYLES: Yes. Your name, again, sir?

14 MR. ROSENSTOCK: James Rosenstock.

15 MR. LYLES: Mr. Rosenstock, what is your
16 background educationally?

17 MR. ROSENSTOCK: I studied mathematics in
18 college. I came to work with the National Park Service and
19 have been trained in the field ever since.

20 MR. LYLES: Okay. And what have been your
21 major assignments with the Park Service?

22 MR. ROSENSTOCK: Well, I did public tours and
23 programs at a place called Oxon Hill Farm for about 15 years.
24 For about the past six years, I have done natural resources
25 work, including vegetation surveys and wetlands, tree
26 protection plans at Piscataway Park, adjoining areas issues

1 and park lands all throughout D.C. and Maryland.

2 MR. LYLES: And how many years have you been
3 with the Park Service?

4 MR. ROSENSTOCK: 20 plus.

5 MR. LYLES: How many years have you been doing
6 what you do now with regard to Mahon and the Fort Circle
7 Trail?

8 MR. ROSENSTOCK: Six years, sir.

9 MR. LYLES: Six years. Okay. So you are not an
10 architect by trade?

11 MR. ROSENSTOCK: No, sir.

12 MR. LYLES: Okay. You are not -- you have no
13 experience directly with soil erosion patterns on sites like
14 this?

15 MR. ROSENSTOCK: Oh, yes, sir.

16 MR. LYLES: What is your experience with that?

17 MR. ROSENSTOCK: Yes, sir. We have problems
18 with soil erosion in many of the hillside parks. And
19 basically it has been my practical experience in the field
20 that by the nature of the clay and gravel soils and the clay
21 lenses, that the hydrological patterns coming through, that
22 once you cut into these soils, there are often great problems.

23 MR. LYLES: So what is your experience with
24 retaining walls and architecture as it relates to those soil
25 erosion patterns?

26 MR. ROSENSTOCK: That they are touchy to

1 construct and --

2 MR. LYLES: Have you ever constructed any
3 buildings yourself or been involved in the construction?

4 MR. ROSENSTOCK: No, but I have --

5 MR. LYLES: Have you been involved in the
6 construction of buildings on soil issues or soil erosion areas
7 that you have just described?

8 MR. ROSENSTOCK: I have been involved with the
9 permitting and park projects that have involved such like
10 along Baltimore-Washington Parkway at Route 197. I have had
11 personal experience of the great difficulties in encountering
12 soil erosion once a slope has been cut into and in situations
13 similar to this.

14 MR. LYLES: Okay. Now where the Park Service
15 maintains that there is an alleyway, do you know what grade of
16 slope that is between the alleyway and the Park Service park
17 land?

18 MR. ROSENSTOCK: No, sir. I don't have that
19 information.

20 MR. LYLES: Okay. Are you aware of the
21 distance of the building by looking at this chart and the
22 other charts the architects have provided you -- the distance
23 of the building to Park Service property? Do you know that?

24 MR. ROSENSTOCK: No. I don't know what the
25 setback of your building is. I understand you need a variance
26 for it. So it is close to the back of your property line.

1 MR. LYLES: That is all right. No further
2 questions. Now with respect to the area where you said trees
3 were cut, are you aware of how many trees were cut down in
4 that particular area that you allege is Park Service property?
5 MR. ROSENSTOCK: I don't have an exact count,
6 sir.
7 MR. LYLES: Okay. Can we see from your
8 pictures that you provided what trees were cut?
9 MR. ROSENSTOCK: You can get an idea of it. I
10 don't have an exhaustive account. Like I say, the property
11 has not been surveyed.
12 MR. LYLES: That is all. No further questions.
13 With respect to --
14 MS. KING: Let him answer you.
15 MR. LYLES: He did answer my question.
16 MS. KING: He is answering your question and
17 you interrupted him when you started --
18 MR. LYLES: He said no. He said he did not
19 know the number of trees. He has answered my question.
20 MR. ROSENSTOCK: The reason I did not know the
21 number of trees, sir, is that the property has not been
22 properly surveyed.
23 MR. LYLES: Oh, okay. So when we talk about
24 where your land begins and where our land ends and where our
25 land begins and your land ends, what are you using to
26 determine what that is?

1 MR. ROSENSTOCK: We are using the D.C. lands
2 map that you have there. It is quite clear from out on the
3 site --
4 MR. LYLES: This here?
5 MR. ROSENSTOCK: Yes, sir.
6 MR. LYLES: Okay. And so this D.C. lands map -
7 - you haven't properly surveyed the land, but using this are
8 you saying then for the Board that the area where trees were
9 cut down were in this little bump here?
10 MR. ROSENSTOCK: Yes, sir.
11 MR. LYLES: This bump in the road. Okay.
12 MR. ROSENSTOCK: And within the green area that
13 is D.C. right-of-way.
14 MR. LYLES: Okay. So the green area is D.C.
15 right-of-way and you don't have any authority or control over
16 that area, correct?
17 MR. ROSENSTOCK: No, sir.
18 MS. KING: But neither do you, sir.
19 MR. LYLES: Okay. But we are here about his
20 issues.
21 MS. KING: I understand.
22 MR. LYLES: And that has to do with his trees
23 being cut down. So we are just trying to determine whether or
24 not he knows how many trees and what effect. He is the one
25 making the case that there was a drastic effect on some trees
26 being cut down. Our argument was that there wasn't a drastic

1 effect and there was an innocent mistake. Given that if you
2 look at this plot here, there is a row which indicates Fort
3 Mahon Trail Park, but no indication that Park Service leaps
4 over the road and abuts the city property. This is a very
5 small area as they provided you. So we are just asking
6 questions to see exactly what he is trying to prove here. I
7 don't have any other questions at this time.

8 CHAIRPERSON REID: Okay. Thank you.

9 MS. BAILEY: Madam Chair, may I please ask one
10 question of Mr. Rosenstock?

11 CHAIRPERSON REID: Sure.

12 MS. BAILEY: Mr. Rosenstock, it seems as if you
13 are having difficulty with any kind of building on that site.
14 What would you like to see on that site? Certainly it is not
15 a church --

16 MS. KING: Beverly, I don't think that is
17 germane. What he wants to see on the site is not germane.
18 What you and I want to see or what John and Sheila want to see
19 is not germane.

20 MS. BAILEY: I guess my concern is, Ms. King,
21 can anything be built on that site?

22 MR. ROSENSTOCK: Absolutely. That is privately
23 owned property and it can be developed as a matter of right.

24 CHAIRPERSON REID: I think that the issue was
25 the mass of this particular structure on that particular site.
26 Correct?

1 MR. ROSENSTOCK: Yes, ma'am. Yes, ma'am.

2 CHAIRPERSON REID: All right.

3 MR. LYLES: I have just one additional question
4 for Mr. Rosenstock. What would you consider -- what do you
5 consider is massive?

6 MR. ROSENSTOCK: A building that cannot be
7 built within the bounds of the zoning regulations of the site.
8 It is -- that is the reason we are here, sir.

9 MR. LYLES: I have one further question for the
10 lady in the middle from the ANC. You said that the ANC sent a
11 letter to Holy Christian Missionary Baptist Church?

12 MS. WILLIAMS: I have a copy of the letter that
13 was sent out and all -- and I think they said they sent it out
14 twice.

15 MR. LYLES: Do you know the date that the
16 letter was sent?

17 MS. WILLIAMS: I don't know the date that the
18 letter was sent, but the meeting was July 9.

19 MR. LYLES: Okay. But you don't know when the
20 letter was sent?

21 MR. CREASEY: I might be able to answer that.
22 I believe that letter was sent -- ANC Commissioner Mike
23 Creasey, 7D-01. To the best of my knowledge, that letter was
24 hand-delivered to one of their people. I am not sure who, but
25 it was sent. Because our ANC office is in their 7C district,
26 and we do rent the building. The building that she owns, we

1 have an office there. So it is really no thing where we
2 should have a miscommunication. And I believe she has spoken
3 with Ms. Diane McCain, Commissioner Diane McCain of 7D-02.
4 But they were aware of the meeting.

5 MR. LYLES: And you -- where is your experience
6 about their awareness of the meeting? How do you come by your
7 knowledge?

8 MR. CREASEY: I am ANC commissioner and I help
9 draft the letters and so forth.

10 MR. LYLES: Did you deliver the letter
11 yourself?

12 MR. CREASEY: As I just stated, I believe that
13 Commissioner Diane McCain --

14 MR. LYLES: Is she here in the room today?

15 MR. CREASEY: No.

16 MR. LYLES: Okay. And you didn't deliver the
17 letter yourself. Could I ask you, was a call made to Holy
18 Christian Missionary Baptist Church?

19 MR. CREASEY: Not by myself.

20 MR. LYLES: No further questions.

21 MR. CREASEY: Could I ask him a question?

22 CHAIRPERSON REID: Well, no. That actually --
23 his time for cross examination really should not have included
24 the questioning of you. But that is okay. All right. Now we
25 will have closing remarks by the applicant.

26 MR. LYLES: We appreciate the opportunity to

1 come before you today and present our case with respect to the
2 variances. We think that we have provided if not ample
3 justification, some justification for granting the variances.
4 We would appreciate your kind consideration of both the rear
5 yard setback variance request and also with regard to the
6 parking. We would just hasten to add, though, that our
7 attempts to deal with the community and to sit and talk with
8 the community and the Park Service may not have been to the
9 extent that those organizations would have liked, but that is
10 not because we did not try to do that. And we will continue
11 to do that so that we can be integrated greatly into the
12 community. We would just ask that our request for the rear
13 yard setback from 12.8 to 12 feet be granted and also our
14 parking request for a variance from 82 spaces to 16 spaces
15 also be granted, and we appreciate coming before you today.

16 CHAIRPERSON REID: Let me ask you a question
17 before we end this. Was the property posted?

18 MR. LYLES: When you say posted?

19 CHAIRPERSON REID: For this hearing.

20 MR. LYLES: Oh, yes it was. Yes, it was.

21 There was some discrepancy as to the date, but the 28th -- it
22 didn't have to be posted on the 28th. It had to be posted on
23 the --

24 CHAIRPERSON REID: For 13 days rather than 15.

25 MR. LYLES: Well, it had to be posted 15 days.

26 But the difference between the --

1 MR. HART: They were one or two days late.

2 CHAIRPERSON REID: But it was posted?

3 MR. HART: Yes. It was posted, yes.

4 MR. LYLES: Yes, it was definitely posted, yes.

5 And it didn't have to be posted on the 28th as the Park

6 Service maintains. It had to be posted in July.

7 CHAIRPERSON REID: Okay. Do you have a survey

8 -- a land survey of that particular parcel?

9 MR. LYLES: Yes, we do. But the architect, I

10 think, may have taken it with him. We can supplement the

11 record as soon as we can get to the architect today.

12 CHAIRPERSON REID: If you had a survey -- okay,

13 I don't understand. If you do have a survey, then why was

14 there a problem with the --

15 MR. LYLES: Well, because the city survey is

16 incorrect and that is where the problem is.

17 CHAIRPERSON REID: The property lines.

18 MR. LYLES: Yes. The city surveys show, as the

19 Park Service alluded to in his conversation, it shows that

20 there is this bump in the property, and it is not properly

21 identified who that bump belongs to. So the city documents

22 that we had and we relied upon when cutting down the trees was

23 incorrect.

24 MS. KING: Okay. You better supply that.

25 Because none of the maps that we have shows any bump of any

26 variety that could possibly be construed to be anything.

1 MR. LYLES: And that is what I am saying. That
2 is part of the problem. The alley does not belong to the
3 park, but it is not shown on the --
4 MS. KING: But it also doesn't belong to you.
5 MR. LYLES: We know that. But we didn't cut
6 trees down --
7 MS. KING: Would you -- I would like to have
8 that -- the survey that shows -- that does not show -- that
9 shows that you have a bump of property going into the Fort.
10 MR. LYLES: Sure.
11 MS. KING: We would like to see a copy of that,
12 sir.
13 MR. LYLES: Sure.
14 CHAIRPERSON REID: All right. Are you done?
15 MR. LYLES: Yes, we are.
16 CHAIRPERSON REID: Thank you.
17 MR. LYLES: Thank you.
18 CHAIRPERSON REID: Excuse me, that is the end
19 of the case. It concludes with the closing remarks by the
20 applicant.
21 MR. CREASEY: I just wanted to say --
22 CHAIRPERSON REID: You can discuss that with
23 staff and they will make sure that we receive the information.
24 Ms. King, you had said something about the applicant trying to
25 acquire additional property. So I am thinking --
26 MS. KING: Well, it becomes even more

1 problematic because the woman who lives next to some of the
2 property that they have their eye on acquiring is going to
3 oppose it. So it would be yet another case, because they would
4 have to get permission in that residential area to have a
5 parking lot, and there would be opposition at least from one
6 party whose property abuts.

7 CHAIRPERSON REID: But they were -- they
8 identified three or four possible sites that could accommodate
9 the parking. The question or what I was about to say, and I
10 will ask Mr. Parsons this, if we would like to give some
11 additional time for them to acquire additional parking space
12 before making the decision? They say that they possibly can.
13 And if that is the case, then we could postpone a decision and
14 give them --

15 MS. KING: Postpone a decision until the first
16 week in September?

17 CHAIRPERSON REID: Well, that would be the
18 normal date.

19 MR. PARSONS: Well, that gives them the
20 impression that if they go out and sign a contract with
21 Safeway, we will approve the application and I am not sure
22 that is where I am.

23 CHAIRPERSON REID: All right. Where are you?

24 MR. PARSONS: As I expressed to the Reverend, I
25 think it is too big a building for the site. I think they
26 ought to reconsider the size of the church and get on with

1 their mission. Certainly a church of 400 to 500 seats would
2 probably work here. I am not going to design it. But with
3 adequate parking and a better fit on the property so that they
4 don't have to hold it up with big retaining walls and so
5 forth. So I would be in favor of denying the application if
6 you want to know where I am coming from. So urging them to
7 get parking elsewhere I think is problematic.

8 MS. KING: I don't buy into that. I think that
9 --

10 CHAIRPERSON REID: So the modification of the
11 size, then, which would allow them to build a matter of right?
12 And they won't have to even come back here?

13 MR. PARSONS: The zone would. I mean, I don't
14 know.

15 MS. KING: I mean, depending upon -- I mean, if
16 they build a smaller church, they could have more parking
17 spaces. They could have one for every 10 people or something
18 like that. And presumably they wouldn't have to have that 8-
19 foot variance in the rear. And then they could do it as a
20 matter of right without reference to this.

21 CHAIRPERSON REID: Okay. Are you saying to
22 tell them today?

23 MR. PARSONS: That is all right with me. I
24 would move that we deny the application.

25 MS. KING: I will second that for all the
26 reasons that we have discussed.

1 CHAIRPERSON REID: All right. All in favor?
2 MR. PARSONS: Aye.
3 MS. KING: Aye.
4 CHAIRPERSON REID: If I abstain -- I would like
5 to abstain on this one.
6 MR. PARSONS: Then by all means do.
7 CHAIRPERSON REID: All in favor, aye. I am
8 sorry, all in favor -- you all just voted. All opposed? And
9 I will abstain.
10 MS. KING: Don't we have to have three votes?
11 We have to have three votes. It is a five member board.
12 CHAIRPERSON REID: We have to have three votes
13 to pass it. If we don't have three votes, it is the lack of a
14 --
15 MS. KING: Oh, I see. So it fails for lack of
16 --
17 CHAIRPERSON REID: Lack of a majority.
18 MS. KING: Is that correct? Is Sheri here or
19 has she disappeared?
20 MR. HART: It actually fails. It fails.
21 MS. KING: The motion fails. And, therefore,
22 you are not --
23 CHAIRPERSON REID: We record two in favor and
24 one abstention.
25 MS. KING: Therefore, the motion fails --
26 CHAIRPERSON REID: For lack of majority.

1 MS. KING: The motion fails, and the motion is
2 to deny.
3 CHAIRPERSON REID: Right.
4 MS. KING: So your opposition approves this
5 project.
6 CHAIRPERSON REID: No. I am abstaining.
7 MS. KING: That is what I am saying.
8 CHAIRPERSON REID: So your motion was to deny.
9 MS. KING: There is no -- we have taken no
10 action. You can't take action with just two votes. Because it
11 is a five member board. We need two votes.
12 CHAIRPERSON REID: All right. Okay. Let's
13 start over again. All in favor of the motion to deny?
14 ALL BOARD MEMBERS: Aye.
15 CHAIRPERSON REID: All opposed? Okay.
16 MR. HART: Staff will record the vote as three
17 to zero to deny, Ms. King, Mr. Parsons and Ms. Reid.
18 MR. LYLES: Excuse me, is that on -- which
19 variance is that on?
20 MS. KING: On all of them.
21 CHAIRPERSON REID: Well, it had to be on both
22 because it wouldn't serve any purpose to approve one and not
23 the other.
24 MR. LYLES: Well, it would help us if we had to
25 come back, though. We would be for one variance rather than
26 two.

1 MS. KING: No. We have denied both
2 applications.
3 MR. LYLES: It wasn't clear on the record.
4 MS. KING: The case is denied. And, you know,
5 I sympathize with your reluctance, and I am not happy about it
6 either.
7 CHAIRPERSON REID: Oh, yes.
8 MS. KING: But it is just too massive for that
9 site.
10 CHAIRPERSON REID: Just for the record, I think
11 that it is certainly a very worthwhile endeavor. But I just -
12 - we have to go by the regulations. Our hands are tied and
13 there is nothing to convince us that that particular church or
14 that size church can work with the parking that is required at
15 this time.
16 MR. LYLES: Thank you very much.
17 MS. KING: Thank you.
18 CHAIRPERSON REID: We will recess for 10
19 minutes.
20 (Whereupon, at 3:41 p.m. off the record until
21 3:56 p.m.)
22 CHAIRPERSON REID: We will resume the afternoon
23 session.
24 UNKNOWN SPEAKER: Good morning -- good
25 afternoon, Madam Chair and members of the --
26 MS. KING: Good evening. The case hasn't been

1 called.

2 CHAIRPERSON REID: Do you have a preliminary
3 matter as it pertains to this particular case? If you will
4 let Mr. Hart call the case. Mr. Hart will call the case and
5 swear everyone in who is involved in this particular case.
6 And then if you have a preliminary matter, I will allow you to
7 speak at that time.

8 MR. HART: Application No. 16475 OF 403 C
9 Street, N.E., L.L.C., pursuant to 11 DCMR 3107.2 for a
10 variance from the maximum allowable floor area ratio and from
11 the parking requirements under Section 771.2, 1203.3, and
12 2101.1 for the construction of an office building in a CAP/C-
13 2-A District at premises at 403 C Street, N.E., Square 814,
14 Lot 825. Would those persons intending to testify in this
15 case please stand and raise your right hand to take the oath?

16 (WITNESSES ARE SWORN.)

17 CHAIRPERSON REID: Okay, preliminary matters?

18 MS. SCHMIDT: Could you allow me to approach
19 because my hearing --

20 CHAIRPERSON REID: No. You have to speak from
21 there so everyone can hear you. Give your name and address.

22 MS. SCHMIDT: Janet Schmidt, 14 4th Street,
23 N.E. 403 C Street lies in my single member district. It has
24 come to my attention this afternoon prior to the meeting that
25 there are concerns of the Peabody School, the Parent Teacher
26 Association and other bodies, that were not brought to the

1 attention of the ANC. In error, communication had been sent
2 to ANC Commissioner Gus Ventura. It was not his single member
3 district. The parties -- these interested parties have not
4 had an opportunity to be heard on the matter. They are
5 concerned with respect to the parking variance and safety of
6 the children because this property would be required under
7 present law to have 11 parking spaces. They are concerned, the
8 PTA, with respect to shuttling students and the safety of the
9 children with increased traffic. They would like the
10 opportunity for the 6A Commission to hear their position and
11 their concerns before we take a position with respect to being
12 opposing or proposing this variance. So at this time, the 6A
13 Commission is withdrawing their support of this and asking for
14 a postponement so the parties have the opportunity to air
15 their concerns with respect to the safety of the children.

16 MS. KING: Is the PTA or whatever represented
17 here today? Are they here?

18 MS. SCHMIDT: Yes.

19 CHAIRPERSON REID: Okay. You are saying that
20 the notice was inadvertently sent to --

21 MS. SCHMIDT: ANC Commissioner Gus Ventura, who
22 it was not his single member district. In addition --

23 CHAIRPERSON REID: And it should have been sent
24 to you?

25 MS. SCHMIDT: Yes. In addition, it has come to
26 my attention that the posted sign did not address the parking

1 areas requested -- the notice for the hearing today.

2 CHAIRPERSON REID: What did it address? Just
3 one second, please.

4 MR. BROWN: Madam Chair and members of the
5 Board, my name is Patrick Brown from Greenstein, DeLorme &
6 Luchs. I'd like to respond to the preliminary matter. One,
7 the applicant made a presentation to ANC 6A earlier in the
8 month. There was a quorum present. There is a letter in the
9 file where they came out voting in support without
10 reservation. To come at the day of the hearing without having
11 another meeting or any opportunity is inappropriate. They
12 have had their meeting voted with one member voting not
13 present, but otherwise unanimously, and I quote the letter --
14 "In support without reservation." So that they can't now
15 change their mind and cause this hearing to be continued. Can
16 I add one other thing? I don't want to belabor the point.
17 Clearly everybody -- the entire commission had complete notice
18 of this case. They acted upon it based on that notice. So
19 the fact that one SMD got the application and not the other
20 doesn't at the end of the day mean anything, because the
21 entire group, it is my understanding, heard and acted on the
22 matter. That is not to say that we are here to prevent
23 anybody who is interested, and there have been discussions
24 with the Peabody PTA group about their issues. We are not
25 here to prevent anybody from appearing and testifying and
26 making their thoughts known. But for the ANC to come in at

1 the last minute and withdraw their vote of support I think is
2 inappropriate.

3 MS. KING: Excuse me, madam, what is your name?

4 MS. SCHMIDT: Janet Schmidt.

5 MS. KING: And you voted yes on this? You are
6 the single member district person?

7 MS. SCHMIDT: Yes. May I correct the
8 characterization, please? What happened that evening was that
9 I was not advised that this was my single member district and
10 did not have an opportunity to consult with interested parties
11 and homeowners in the community. We decided since none of the
12 Board members had this opportunity to hear from the community
13 that we would follow the decision of the Stanton Park
14 Neighborhood Association. So what we voted to do was not
15 unanimously support this, but we voted to follow the decision
16 of the Stanton Park Neighborhood Association. And we did that
17 and the minutes of our meeting reflect that. We took that
18 position because we felt that the Stanton Park Neighborhood
19 Association did have the opportunity to hear from the
20 community, and we wanted to assist Mr. Scallan in moving
21 forward and not hold him up if Stanton Park Association
22 agreed. We have been advised today that in fact Stanton Park
23 did not speak or meet with the PTA. And so, for that reason,
24 we nor Stanton Park in their recommendations had the
25 opportunity to hear from the PTA, the school, the parents and
26 the homeowners.

1 CHAIRPERSON REID: Okay. But the PTA -- the
2 members of the PTA are here today?

3 MS. SCHMIDT: We have one member.

4 CHAIRPERSON REID: Okay. Then why could they
5 not just testify today in support or opposition?

6 MS. SCOTT: If I -- my name is Laura Scott. I
7 am the chair of the LSRT. Our concern is --

8 MS. KING: Of the what?

9 MS. SCOTT: Of the Local School Restructuring
10 Team of the Capitol Hill buffer school.

11 MS. KING: What does that mean? What is that?

12 MS. SCOTT: It is a body elected by the parents
13 and teachers of the local school. DCPS is
14 the --

15 MS. KING: It is public schools?

16 MS. SCOTT: Yes, these are public schools.

17 MS. KING: And the Peabody is a District public
18 school?

19 MS. SCOTT: Yes, it is. By part of the Capitol
20 Hill cluster schools. Our concern with the opportunity to
21 speak today as opposed to returning it to the ANC is the great
22 weight that is given to the ANC's vote. As they have said
23 without reservation that that is going to be given great
24 weight, perhaps greater weight than what we say today.

25 CHAIRPERSON REID: But how --

26 MR. PERNELL: Madam Chair?

1 CHAIRPERSON REID: One second, please, Pernell.
2 How can we, without any letter -- another letter from the ANC
3 reversing their previous position -- there is nothing -- we
4 don't have anything to allow us to do that. Because what we
5 have in our file is the position of the ANC.

6 MR. BROWN: And that is exactly the point,
7 Madam Chair. You impose some strict standards in what is an
8 appropriate ANC response with the quorum and certain other
9 issues, notice and whatever. And to judge one letter by one
10 standard, which imposes rather high standards which are met by
11 this letter, I believe, and then to judge by a lesser standard
12 what was occurring today doesn't seem appropriate. And it
13 basically -- for an applicant, whether it is this applicant or
14 any other applicant, it doesn't mean anything if you go to the
15 ANC and make a presentation and get a vote. Because if
16 circumstances change, they can change their mind. And I think
17 if you are going to do it, it has to be the same way each way.

18 CHAIRPERSON REID: Well, Mr. Brown, I have no
19 problem with that, even if in fact the ANC had submitted a
20 subsequent letter to reverse the first position, which we
21 don't have.

22 MR. BROWN: Yes.

23 MS. KING: What was the vote for the first
24 position? Just two members who voted yes on the 7th of July
25 changed their minds this afternoon.

26 CHAIRPERSON REID: If they felt strongly enough

1 about it, I would think that they would have sent a subsequent
2 letter reversing their decision.

3 MR. PERNELL: Madam Chair, Daniel Pernell of
4 the 6A Commission. I was present at that meeting. That was a
5 combined meeting with our subcommittee on that day, July 7.
6 We were acting as a body according to the requirements from
7 the BZA to comply within 7 days before the hearing date and we
8 were trying to do that. At the same time, we were trying to
9 be fair to the constituents in the area. At the last minute,
10 I told Ms. Janet Schmidt, Commissioner Janet Schmidt, that it
11 was in her single member district and not in Gus Ventura's.
12 We don't know where the material went to, but it didn't come
13 to the chair, me, for me to inform Ms. Janet Schmidt.
14 Therefore, she didn't have the opportunity to inform Peabody
15 School or anyone in that single member district.

16 MS. KING: But you were aware of that the night
17 of July 7th when you voted, correct?

18 MR. PERNELL: Yes.

19 MS. KING: And you both voted for this
20 resolution?

21 MS. SCHMIDT: No, we did not. We voted to
22 follow the decision of Stanton Park Neighborhood Association.

23 MS. KING: The 6A Commission voted to support
24 Mr. J. Andrew Scallan development without reservation. There
25 is no reference here in the document that I have to the
26 Stanton Park Civic Association. Madam Chair, I move that we

1 do not postpone. We can go forward tonight.

2 CHAIRPERSON REID: Just a moment. Let's allow
3 this gentleman in here because he is trying to say something.

4 MR. SCALLAN: I would only say that I had
5 received --

6 CHAIRPERSON REID: Your name and your address.

7 MR. SCALLAN: Andrew Scallan. I am the
8 applicant. I had talked to someone from the PTA weeks before
9 this. They knew the position of Stanton Park. They had --
10 there was someone at that meeting -- at your meeting that was
11 from the PTA and understood their position -- you know,
12 understood -- Jan, you were there and said they understood
13 that they had some reservations. They are here to tell you
14 what the reservations are. I mean, I just --

15 MS. KING: We can impose a condition.

16 CHAIRPERSON REID: Thank you. This is the last
17 one.

18 MS. LORD: Hi, my name is Victoria Lord. I am
19 --

20 MS. KING: I can't hear a word you are saying.

21 MS. LORD: I am sorry. My name is Victoria
22 Lord and I am Vice President of the PTA for the Peabody
23 School. I am the person from the PTA who has been handling
24 this matter. Mr. Scallan has, indeed, been in touch with
25 people, but they are not official representatives of the PTA.
26 We did not have a representative at this ANC meeting because

1 we were not informed that this issue would be presented to the
2 ANC that evening. So we had no opportunity to gather any of
3 our membership to attend that meeting and to make our views
4 known at that meeting. It is also our understanding that this
5 meeting was a rather disorganized meeting and Mr. Scallan made
6 his presentation on the street.

7 MR. PERNELL: I beg your pardon on that, Madam
8 Chair. This was an organized meeting and it has been for the
9 last three or four years. And I beg your pardon on that.

10 MS. SCHMIDT: Madam Chairperson, if I can make
11 an additional point.

12 CHAIRPERSON REID: Okay. The last comment and
13 then we have to take a vote.

14 MS. SCHMIDT: I first would like to explain the
15 background which stated without reservation. We stated
16 without reservation because discussions of Stanton Park
17 Neighborhood Association, which were done in the absence of
18 Mr. Scallan, was that it was the neighborhood association's
19 hope that if they backed it without reservation that in fact a
20 swap of property would take place where the school board would
21 substitute this property for other property for Mr. Scallan to
22 develop. And that is why the statement without reservation is
23 included. And with respect to Ms. Lord's comments that the
24 meeting was disorganized, I will tell you that the meeting was
25 continued outside the J.O. Wilson School on the street because
26 we were asked to leave the school as they were closing.

1 CHAIRPERSON REID: Thank you. Thank you very
2 much. All right, now --

3 MR. HOOD: Madam Chair, I would just like to
4 add that I very much so disagree with Mr. Brown. I believe
5 that just like applicants have a chance to change their mind
6 when they come down to this Board, so do ANCs and other
7 community groups. But I would like to see us at least keep
8 the record open so that the ANC can go back and work out the
9 issues of the Peabody School. Because I too had that as a
10 concern before we even got into the case. So if we can keep
11 the record open, then I will be willing to go forward.

12 CHAIRPERSON REID: All right. Then I think
13 that the Board -- Ms. King has already put a motion to go
14 forward today and Mr. Hood is seconding?

15 MR. HOOD: I don't know if I want to second it,
16 but I will second it.

17 MS. KING: Go forward with it today provided
18 that we would not make a --

19 MR. HOOD: Provided we keep the record open.

20 MS. KING: It cannot be a bench decision and we
21 will make our decision at a subsequent meeting by which time
22 the -- you know, we will give ample opportunity. We will keep
23 the record open until -- I don't know -- 10 days or whatever
24 the usual thing is. Two weeks or whatever.

25 MR. HOOD: Commissioner King, especially to
26 give the Peabody School and the ANC a chance to express and

1 resolve some of their concerns.

2 MS. KING: And we also always encourage the
3 developers and the community to make some kind of an
4 accommodation so that everybody gets something that they want
5 or ends up reasonably happy. But, you know, to postpone this
6 means that we won't be hearing it until sometime in late
7 October, and I think that is unnecessary delay.

8 CHAIRPERSON REID: And we want this to be done
9 correctly. So, if in fact the ANC has reversed their
10 position, then they need to go ahead and have a meeting and
11 have a vote with a quorum that are present and then submit
12 that to us. That would then basically replace or reverse the
13 decision that we have before us, and that is the only thing we
14 can go by right now. All right.

15 Now that having been done, Mr. Brown.

16 MR. BROWN: Madam Chair, members of the Board,
17 my name is Patrick Brown from Greenstein, DeLorme and Luchs.
18 With me and to my left is my co-counsel, Gene Rested, also
19 from the firm.

20 To my right is Mr. Andrew Scallan, the
21 applicant. And next to him Professor Dorn McGrath who will be
22 testifying on behalf of this application.

23 It's an application to permit the construction
24 of a 3 story building with a cellar in the C-2-A CAP overlay
25 district. In order to accomplish this three variances are
26 required; variances from the 2.5 maximum on FAR, a variance

1 from how that FAR is allocated. And then also a parking
2 variance.

3 Now, this sounds like a full plate. This type
4 of case, and in fact in the types of variances the Board has
5 dealt with previously right down the street at 5th Street.
6 And this case, as the testimony will present, the practical
7 difficulties that justify the variances are, if not the same,
8 more compelling based on the specific limitations of this
9 property; the limitations imposed by the governmental
10 authorities and also a significant realization and shift as it
11 relates to Ward 6, the Capitol Hill overlay district and the
12 comprehensive plan having to do with those areas which clearly
13 point in support of this application.

14 I would particularly like to reference, and
15 it's been presented to the Board, there's a BZA case for 518
16 and 520 C Street, N.E., which is substantially on all floors
17 involving variances from the various restrictions both
18 inherent in the CAP overlay district as well as in general for
19 FAR and parking, which goes through a similar site. And I
20 recommend that reading to the Board because I think it's well
21 a thought out decision by the Board.

22 With that, I'd like to introduce Mr. Scallan,
23 who is here on behalf of the applicant, the 403 C Street
24 Limited Liability Corporation, and ask him to present his
25 testimony. Written copies of that have also been presented to
26 the Board members.

1 MR. SCALLAN: My name is Andrew Scallan. I
2 live at 3018 44th Place, Washington, D.C. I'm a member of the
3 403 C Street, L.L.C., the applicant in this case.

4 Before you today is a request to build a small
5 office building on vacant land near the southeast corner of
6 4th and C Streets, Northeast. The lot overlooks Stanton Park
7 and there's a small six foot wide alley that extends to 4th
8 Street at the rear of the lot.

9 Our request is to build a 3 story plus cellar
10 office building on the site. The variances sought are for
11 allowable FAR of 2.5 non-residential and for lack of parking.

12 Previous to this date the Historic Preservation
13 Review Board reviewed our plans and approved on a conceptual
14 basis the building before you that is the subject of this
15 application. In summary, this building is 25 feet wide, 83
16 feet deep and 40 feet tall to the ceiling of the top floor.
17 At the same time, in spite of our requests for a curb cut at
18 one of several locations, HPRB did not approve a curb cut and,
19 thus, denied us even minimal parking.

20 The allowable density in the CAP overlay C-2-A
21 District is 1.8 FAR. Outside the CAP overlay district in the
22 C-2-A zone the allowable density is 2.5.

23 We have also asked to use it for residential
24 purposes. We do not believe this modest increase in FAR will
25 have an adverse effect on the neighborhood, the Capitol Hill
26 interest district, nor the integrity of the zoning regulations

1 or map.

2 This small, narrow 2500 square foot site
3 represents a number of practical difficulties in light of
4 current building code requirements for egress in Americans
5 With Disability Act, ADA, regulations. Larger rest rooms, an
6 elevator shaft and wide stairways take up a large proportion
7 of the available area for each floor. The relative percentage
8 of the area needed for core requirements in this case is
9 significantly larger than competing buildings with larger
10 floor plates.

11 In addition, the cost of these items, including
12 a budgeted \$45,000 for an elevator and \$15,000 for an exterior
13 stairs, is disproportionate to the total cost of the project.
14 For instance, the \$10,000 fee for a 4 inch water connection
15 needed for a sprinkler system is divided by a much smaller
16 area than competing buildings with greater land area.

17 In summary, these governmental regulations
18 impose substantial practical difficulties in development of
19 this site. These difficulties are not new. The last building
20 built on Stanton Park is located at 518 C Street, almost
21 across the street from this one, catty-corner across the park,
22 and was constructed as a result of BZA decision 14573 in 1987.
23 A 2.5 FAR plus .44 interior garage was approved on a 4,025
24 square foot lot -- which is about 1500 square feet larger than
25 mine. The case reads, and this is the decision, "Any new
26 construction on the site must comply with the requirements of

1 BOCA code, fire code, handicap code and Historic District
2 guidelines. It is not economically feasible or physically
3 desirable to comply with these code requirements on a site as
4 small as this one." Obviously, our site is even smaller and,
5 thus, magnifies the resulting practical difficulties.

6 Secondly, denying of any parking is also a
7 significant practical difficulty. While experience has shown
8 that the vast majority of office workers in this neighborhood
9 use public transportation, particularly the nearby Union State
10 Metro Station, public parking or walk to work, some on site
11 parking is highly desirable. Parking is restricted in front
12 of the site because of the adjacent school and parking in the
13 surrounding residential neighborhoods is restricted to
14 residents. The effect is to deny a commercial owner any
15 nearby parking since they cannot park on their property and
16 they cannot park on the street. In contrast, an existing
17 building would likely be eligible for a waiver of all parking
18 loading requirements based upon its contribution to the
19 character of the historic neighborhood.

20 This building is in compliance with the changes
21 of the zoning regulations recommended by the recent
22 comprehensive plan amendments. These recommendations create
23 an overlay in Ward Six for Historic Capitol Hill neighborhood
24 and the A Street commercial corridor. Now the FAR of 3.0 is
25 recommended for C-2-A and 2.5 for the Capitol interest
26 district. No change in building is recommended. A

1 distinguished planner instrumental in drafting those changes,
2 Dorn McGrath, will testify as to difficulties in small lot
3 development.

4 We have presented our case to three community
5 organizations. The Stanton Park Neighborhood Association
6 voted to support this application. The ANC-6A voted to
7 support this application without reservation. The Capitol
8 Hill Restoration Society voted to support one variance, took
9 no position on one and opposed one variance even though they
10 initiated and support the proposed comprehensive plan overlay.

11 We think it is also noteworthy that they did
12 not oppose in a similar variance for 518 C Street in 1987.
13 Significantly CHRS recognized the site limitation and
14 encouraged zoning relief at the Zoning Commission level.

15 We have been sensitive to the issues raised by
16 the Peabody PTA. Our partnership and the landowner before us
17 have allowed the PTA to use the land for a garden project for
18 some 20 years. We are willing to stipulate that the windows
19 facing the school yard be constructed in nonbreakable
20 materials and we'll work closely with the school to prevent
21 any hazards to the children during the construction. We will
22 not allow any trespassing by construction vehicles during
23 construction. We also note the typical office worker in our
24 building will arrive after normal school start hours and will
25 depart well after school is dismissed.

26 In conclusion, this small site development

1 clearly contains practical difficulties, and that is that the
2 development not only would have no inverse impact on the
3 neighborhood, but indeed, it is in conformance with planned
4 use recommendations currently under consideration.

5 Thank you very much.

6 CHAIRPERSON REID: Questions?

7 MS. KING: Not yet.

8 CHAIRPERSON REID: Mr. McGrath -- is Dorn going
9 to go next?

10 MR. BROWN: Yes. Before he gives his
11 testimony, request the Board recognize him as an expert
12 witness, not only with respect to urban planning and land use
13 matters for which you will recognize, but even going even
14 further than that to the specifics not only of the Capitol
15 Hill area and Ward Six where he's been intimately involved in
16 planning issues there, but also to this type of small lot
17 development in that type of context on Capitol Hill. I think
18 his knowledge and background generally as well as specifically
19 in this area is worthy of note and important to examining this
20 case, and I would ask he be recognized in that regard.

21 CHAIRPERSON REID: Has he been recognized as an
22 expert witness here before?

23 MR. BROWN: We have submitted his CV and a list
24 of where he has been expert, including this Board as well as
25 many others and courts in this area and throughout -- I guess
26 throughout the country.

1 CHAIRPERSON REID: You submitted a CV?
2 MR. BROWN: Yes.
3 MS. KING: We received it today.
4 CHAIRPERSON REID: Oh, I haven't seen it.
5 MR. BROWN: And on top is a one page list that
6 kind of summarizes his expert testimony.
7 MS. KING: Page 10 of his CV is the original --
8 MR. BROWN: Well, actually, it should be a
9 separate page, which --
10 MS. KING: It is, but I mean it constitutes a
11 tenth page.
12 MR. BROWN: Yes. Yes.
13 CHAIRPERSON REID: Okay. I have no problem
14 with him being accepted as an expert witness.
15 MS. KING: No, I think he's well known as a
16 land use planner.
17 CHAIRPERSON REID: Okay.
18 MR. BROWN: Thank you very much.
19 PROFESSOR McGRATH: Good afternoon, madam
20 Chairman and members of the Board. I'm Dorn McGrath, Jr.
21 I am a resident of the District of Columbia. I
22 live at 2710 Brandywine Street, Northwest. And I'm here to
23 testify today on behalf of the applicant, 403 C Street,
24 Northeast, L.L.C.
25 I'm employed in the District as a professor of
26 urban and regional planning at the George Washington

1 University, and I serve there also as chairman of the
2 Department of Geography and Director of the Institute for
3 Urban Development Research.

4 As Director of that institute I oversaw the
5 preparation of a ward plan for Ward Six some years ago carried
6 out under my direction and my associate by graduate students
7 in urban and regional planning in collaboration with many
8 citizen groups and businesses, all of whom provided
9 substantial financial assistance for the project, and I might
10 say entirely for the students.

11 Now, this project was completed in 1988, after
12 more than two dozen meetings with the community groups. And
13 the City Council approved and adopted the Ward Six plan in
14 1989. And I admit that I live in Ward Three, but I've become
15 quite familiar with characteristics and many details of Ward
16 Six as a result of my continuing experience with development
17 trends and issues in the Ward for 20 odd years.

18 Our city has to live with the awkward legacy of
19 a zoning ordinance that first was prepared in 1958, which has
20 added to all of our tribulations, yours particularly. Local
21 zoning regulations have been amended countless times since
22 them to accommodate the needs of rapidly changing building and
23 environmental technologies.

24 Our analyses of the framework of zoning
25 regulations in the mid 1980's revealed widespread handicaps to
26 otherwise desired types of development on Capitol Hill and

1 elsewhere in the Ward. The local zoning regulations imposed
2 artificial, quite obsolete
3 unrealistic requirements on many historic properties
4 preventing their use and maintenance in keeping with evolved
5 technology and commercial standards.

6 Another factor that emerged in the 1980's was
7 the federal requirement to modify buildings to make them
8 easily accessible to persons with disabilities. This was the
9 Americans with Disabilities Act. The federal mandated ADA
10 requirements dictated specific dimensional standards for
11 ramps, hallways, elevators and bathroom facilities at
12 buildings that old and new were required to meet. I would add
13 that my own university spent many millions of dollars trying
14 to adapt old buildings to meet those standards at great
15 difficulty.

16 The standards imposed disproportionately heavy
17 penalties on older buildings and on small narrow lots because
18 there can be no compromises with finite dimensions of a 25
19 foot wide lot and the resulting flurry available when the ADA
20 required dimensions become part of the design and layout of
21 individual floors.

22 The building proposed for 403 C Street,
23 Northeast, has been designed to meet these ADA requirements.
24 And the FAR of 2.5 as recommended some time ago for the C-2-A
25 Capitol Interest District is needed to enable this building to
26 meet the remainder of its basic use space use program within

1 the lawful building envelope.

2 The variance is sought to permit development of
3 Lot 825 in square 814 with this lot appear to be reasonable
4 and appropriate for the property. Developing the presently
5 empty lot as proposed for an office building keeping with the
6 scale and other architectural characteristics of the Stanton
7 Park neighborhood seems to be entirely consistent with the
8 trend of nonresidential use of the southside of Stanton Park
9 between 4th and 6th Streets.

10 Nearly all of the present C Street frontage of
11 the park is in use for commercial purposes, including the
12 National Association for Home Health Care in the far corner,
13 lawyers' offices, a court reporter, a notary public office,
14 Townhouse Furniture Store, a former residence now for sale for
15 commercial use. Such uses are not only permitted under
16 existing zoning, the C-2-A Capitol Interest District, but
17 they're encouraged by the specific language of the most
18 recently adopted version of the Comprehensive Plan Act of 1984
19 which was adopted in December of 1998.

20 Now, I've listed all the sections with which
21 that is in compliance which actually encouraged this, but I
22 didn't attempt to read them here. But they're all as they are
23 listed with respect to the Ward Six plan in that whole chapter
24 of the original ordinance.

25 As recognized also, the D.C. Historic
26 Preservation Review Board has approved the proposed design for

1 the building to occupy the now vacant premises except for any
2 curb cut. Accordingly, in my opinion, the proposed office
3 building for this site would be consistent with the character
4 of the neighborhood and its logical development and that its
5 performance characteristics would compliment other functions
6 performed by commercial uses and public facilities in the
7 immediate vicinity of the Capitol Hill Historic District.

8 Thank you. I'll be glad to answer questions if
9 there be need.

10 MS. KING: I have questions.

11 CHAIRPERSON REID: Okay. Ms. King, begin.

12 MS. KING: The red building is the addition and
13 the gray and white building are the existing structures?

14 MR. SCALLAN: No, the red building is the new
15 structure. The white building is the adjacent property.

16 MS. KING: It's the adjacent property

17 MR. SCALLAN: Yes, ma'am.

18 MS. KING: Oh? Well, now there's an existing
19 building?

20 MR. SCALLAN: No, ma'am. This is a vacant lot.

21 MS. KING: Oh, I see. The existing building
22 doesn't belong -- I mean where it says here "existing
23 building," that doesn't belong to you?

24 MR. SCALLAN: Yes. It probably should say
25 adjacent property owner.

26 MS. KING: Yes. I mean, I thought well they're

1 adding on, but no.

2 MR. SCALLAN: No.

3 MS. KING: All that you're involved in is this

4 piece of property, the one that's outlined in red on here?

5 MR. SCALLAN: Yes, ma'am.

6 MS. KING: Okay.

7 Now, if you had been given a curb cut, where

8 were you going to put your parking?

9 MR. SCALLAN: Well, I first asked to -- I

10 designed a building that would have a garage in the front.

11 MS. KING: I see. Okay.

12 MR. SCALLAN: And then I was told by the

13 neighborhood associations that was not desirable and they

14 suggested maybe on 4th Street there is --

15 MS. KING: Yes, the Historic Preservation

16 Review Board is very tough about curb cuts.

17 MR. SCALLAN: Right. There is a six foot alley

18 on 4th Street and I asked for conceptual approval if I could

19 work a deal with the adjacent property owner to get an

20 easement, that we could at least park something in the back.

21 That was also denied.

22 MS. KING: Okay. All right. It's clear.

23 And the school playground, do we have a

24 photograph in the file that shows a view looking across your

25 property to the school playground?

26 MR. SCALLAN: Yes, you should. You should have

1 something in the file that shows both the property and the
2 school.

3 MS. KING: And how wide is that playground?

4 MR. SCALLAN: That playground in the front
5 there, I'm going to say is 150 feet wide. There's probably
6 150 feet, I would think. Maybe 100 to 150 feet between our
7 lot and the Peabody structure itself.

8 MS. KING: Okay. Great.

9 No further questions at this time.

10 CHAIRPERSON REID: Mr. Hood.

11 MR. HOOD: Mr. Scallan, have there been any
12 discussions, your proposed use is office --

13 MR. SCALLAN: Yes.

14 MR. HOOD: Have you had any discussions on what
15 type of tenants you're going to attract or what you're going
16 to do?

17 MR. SCALLAN: Well, I think that your type of
18 tenant that you'll attract or owner, it very well could be a
19 build-to-suit building, would be a nonprofit type office user,
20 probably. That's the typical small association representing
21 someone in Washington.

22 MR. HOOD: Has anyone had any contact if this
23 is approved to be able to go into the facility? Do you have
24 anybody at the moment?

25 MR. SCALLAN: No, I do not have a purchaser in
26 hand or a user.

1 MR. HOOD: No further questions.

2 CHAIRPERSON REID: All right. Is she going to

3 testify?

4 MR. BROWN: No, she's my co-counsel.

5 CHAIRPERSON REID: I forgot. You said that.

6 I'm sorry.

7 MR. BROWN: In case I get struck by lightening.

8 CHAIRPERSON REID: Okay. We have no further

9 questions at this time.

10 Can we have questions and closing remarks.

11 MR. BROWN: Reserve closing remarks.

12 CHAIRPERSON REID: Let me see if there's any

13 cross examination before you leave.

14 The ANC -- did you have any questions?

15 MS. SCHMIDT: May I ask a question so -- spoke

16 here today?

17 CHAIRPERSON REID: All right. Single member

18 district representative?

19 MS. SCHMIDT: Okay. Excuse me. Could you tell

20 me your name over again, please? I didn't hear you.

21 PROFESSOR McGRATH: McGrath.

22 MS. SCHMIDT: McGrath.

23 CHAIRPERSON REID: Who do you want to ask

24 questions of?

25 MS. SCHMIDT: I wanted to ask Mr. McGrath a

26 couple of questions.

1 CHAIRPERSON REID: Mr. McGrath, please come
2 back up. I'm sorry.

3 PROFESSOR McGRATH: Yes.

4 MS. SCHMIDT: Mr. McGrath, could you tell me to
5 what extent or percentage wise the ADA requirements which was
6 enacted in 1992 would require the building to be enlarged?

7 MS. KING: You know, I can't hear you or see
8 you. Why don't we move this now that we've dealt with, and
9 why don't you stand near one of the microphones so that the
10 recorder can hear you. And will you speak up so we can all
11 hear you?

12 MS. SCHMIDT: First of all, let me ask you, are
13 you paid for your testimony here today?

14 PROFESSOR McGRATH: Yes.

15 MS. SCHMIDT: What is your fee?

16 PROFESSOR McGRATH: My fee?

17 MS. SCHMIDT: Yes.

18 MR. BROWN: I object to that.

19 PROFESSOR McGRATH: I don't know that I have --

20 CHAIRPERSON REID: Sustained.

21 MR. BROWN: I mean he's --

22 MS. KING: Sustained.

23 CHAIRPERSON REID: Sustained.

24 MS. SCHMIDT: It is correct you are paid for
25 your testimony?

26 PROFESSOR McGRATH: I am.

1 MS. SCHMIDT: Are you an expert witness in
2 these type of cases?

3 PROFESSOR McGRATH: Yes.

4 MS. SCHMIDT: All right. Now you stated that
5 the ADA which was passed in the 1980's, but it was in fact
6 passed in 1992, effected the size --

7 MS. KING: Would you share your remarks with
8 the Board?

9 MS. SCHMIDT: Yes.

10 MS. KING: Okay. You've got to speak up.

11 CHAIRPERSON REID: We can't hear.

12 MS. KING: And this segment is for to be given
13 the opportunity to ask questions and you can't testify. You
14 cannot testify.

15 MS. SCHMIDT: All right.

16 MS. KING: Pose whatever you want to say in the
17 form of a question.

18 MS. SCHMIDT: Could you please -- excuse me.
19 Could you please respond and tell me to what extent the
20 regulations enacted under the ADA would require Mr. Scallan to
21 increase the size of the property?

22 PROFESSOR McGRATH: Well, they do not require
23 him to increase the size of the property. The property is
24 finite in its dimensions. What the requirements do is impose
25 a larger spacial requirement on the floor plate of the
26 building because you simply can't make an elevator of a given

1 size smaller, you have to insert it into whatever the space of
2 the floor plate is.

3 MS. SCHMIDT: Well, what percentage would it
4 increase the floor plate of the --

5 PROFESSOR McGRATH: It depends entirely on the
6 design. There's no fixed percentage. That's not a good
7 question.

8 MS. SCHMIDT: Well, you had stated that FAR was
9 needed for that reason, so I'm asking you --

10 PROFESSOR McGRATH: No, I did not. I stated
11 that the FAR is needed for all such buildings on Capitol Hill
12 because the way they were originally built, the design,
13 they're quite narrow and long and there was a notion that at
14 one time they would have to have a residential component above
15 an office or a retail use. And that frustrated development of
16 properties all over Capitol Hill for many, many years and,
17 thus, changes were adopted in the earlier Comprehensive Plan
18 and recommended a 2.5 FAR for a location such as this for both
19 old buildings and new.

20 MS. SCHMIDT: So you opine as to whether or not
21 -- how much you would need in excess of 2.5 to comply with
22 ADA?

23 PROFESSOR McGRATH: You don't need anything in
24 excess of 2.5. All you need is 2.5

25 MS. SCHMIDT: So he could build a building and
26 comply with ADA without having a variance for the -- in

1 coverage of the building on the property?

2 PROFESSOR McGRATH: No, no. Probably not. I
3 mean, he designed the building, it is building and he designed
4 it this way accommodating all the ADA requirements on that
5 site.

6 MS. SCHMIDT: Could a smaller building be built
7 on that property and accommodate ADA but it would only be less
8 financially advantageous to the owner?

9 PROFESSOR McGRATH: I could not say. I did not
10 design the building.

11 MS. SCHMIDT: You said that you felt that this
12 would not negatively impact the neighboring area. Have you
13 taken into account the school and talked to members of the
14 school when you reached that conclusion?

15 PROFESSOR McGRATH: No.

16 MS. SCHMIDT: You also said that it would not
17 impact the neighboring premises. Could you tell me how it
18 will not impact or have you looked at what the use of the
19 neighboring commercial property was when you reached that
20 conclusion?

21 PROFESSOR McGRATH: Well, to answer your
22 questions in reverse, yes, I have walked the entire frontage
23 of C Street between 4th and 6th. and looked down each street
24 and walked each street and inspected the properties. And in
25 all likelihood a new building on that site would enhance
26 rather adversely effect any properties.

1 The building on the corner presently in
2 ambiguous use is not a marvelous building. This building is
3 designed much more carefully, the proposed building, and would
4 probably enhance the value of that one as well as some others
5 in the area.

6 MS. SCHMIDT: I'm not speaking to value, but
7 could you talk about how it would enhance the neighborhood?
8 Not with respect to value of the commercial premises.

9 PROFESSOR McGRATH: Well, the neighborhood, I
10 believe, would be enhanced by the introduction of more people
11 using the neighborhood facilities; the streets, the parks and
12 would provide opportunities for employment and all the things
13 that go with employment in the neighborhood. And a rather
14 small number of people it probably would be.

15 MS. SCHMIDT: How would that impact children
16 going to and from the school and the shuttle buses? Have you
17 looked at that issue and what's your conclusion?

18 PROFESSOR McGRATH: Well, I realize that the
19 hours of operations of a normal building on the site are
20 rather different from the hours of operation of the school.
21 And so the people would be leaving this site usually after
22 school hours, probably 2 or 3 hours later. And the same would
23 be the case in the morning, particularly if the people come as
24 is expected by mass transit.

25 MS. SCHMIDT: Do you know what the --

26 CHAIRPERSON REID: How many questions do you

1 have?

2 MS. SCHMIDT: Just one more.

3 Do you know what the tenant will be in the
4 building and what kind of traffic they will bring to bear on
5 the neighborhood?

6 PROFESSOR McGRATH: Well, I do not know the
7 tenants. As I think Mr. Scallan testified, he does not have a
8 tenant in mind right now. But quite typically judging from
9 the character of the many occupancies along that frontage and
10 in the immediate vicinity, it would be likely to be clerical
11 employees and executive employees of some association or some
12 office retail group that would occupy the building. It would
13 not involve manufacturing; it could not. It would not involve
14 heavy industry, it could not. It would not involve heavy
15 delivery vehicles. It seems it would be a rather light on the
16 ground use.

17 MS. SCHMIDT: Just one more question. Are you
18 aware when you arrived at that conclusion it wouldn't impact
19 the school and the children coming and going that they have a
20 shuttle bus to another satellite facility that comes back and
21 forth during the day?

22 PROFESSOR McGRATH: Yes, I'm familiar with
23 that.

24 MS. SCHMIDT: And you took that into account in
25 reaching the conclusion that there wouldn't be negative
26 impact?

1 PROFESSOR McGRATH: Of course.

2 MS. SCHMIDT: Thank you very much.

3 CHAIRPERSON REID: Mr. Pernell, did you have

4 any questions?

5 MR. PERNELL: Not for cross examining, no.

6 CHAIRPERSON REID: Okay. All right. Mr. Hood?

7 MR. HOOD: Mr. Brown, I just have a quick

8 question for you.

9 MR. BROWN: Sure, if I can.

10 MR. HOOD: Are you aware of the Stanton Park

11 Neighborhood Association letter July 10 of 1999?

12 MR. BROWN: Yes.

13 MR. HOOD: Could you briefly just tell me what

14 some of the concerns were of the Peabody School and have you

15 been working with them, and have you addressed any of them?

16 MR. BROWN: Can I ask Mr. Scallan to answer

17 that.

18 MR. HOOD: Okay.

19 MR. BROWN: I think it's better. There are a

20 lot of questions that I think it's best for him to answer.

21 MR. HOOD: Just briefly, if you could just

22 describe for me some of the concerns of the Peabody School,

23 and I would like to get it from you before they come up.

24 MR. SCALLAN: Well, the first concern is that

25 they -- specific concerns are, the first concern that I heard

26 mentioned was that they were concerned about the windows on

1 the side of the building. And I have said that we will create
2 those -- make those windows out of unbreakable material.

3 I was told that the Peabody School was
4 concerned about if there was any construction, this building
5 or anything, that the children could get hurt and fall into a
6 site. And my point is that we will make every effort to make
7 sure -- I'm not more interested in that than anybody is, you
8 know, that we do this in a safe and sound fashion.

9 I'm told that people are concerned about
10 parking, but I've been denied parking. I mean, I can't do
11 anything about parking.

12 You know, those are the concerns that I know
13 of.

14 Now, I will say that it was brought up, you
15 know, I have been asked if I would swap this property for
16 something else. I have allowed and the previous land owner
17 has allowed, Peabody School PTA to use this property for
18 years. When I bought the property 3 years ago, the PTA
19 president called me up and asked if they could use it, and I
20 allowed them to use it for that purposes. I've paid insurance
21 on it in the meantime, didn't ask them to do that. I mean, I
22 have maintained the property and kept a gardening contract on
23 the property in that time.

24 I understand the PTA would like this to be part
25 of school property, and I have said that I am amenable to
26 discussion along those lines. But, you know, the point is

1 that I have to -- you know, I have my lot and I want to be
2 able to go ahead and plan to build a building there. And I
3 did not feel that mixing those 2 together was appropriate.

4 I will say that no one from the PTA, other than
5 the call to use the property, has directly called me regarding
6 any of these issues.

7 MR. HOOD: Okay. Thank you.

8 CHAIRPERSON REID: Thank you very much.

9 We now go to government reports. Was there a
10 report from the Historic Preservation Review Board? Yes.

11 MR. BROWN: There was a staff report attached
12 as an exhibit to the applicant's pre-hearing statement.

13 CHAIRPERSON REID: I'm sorry, Mr. Brown, what
14 are you saying? What did you just say? I didn't hear you.

15 MR. BROWN: Historic Preservation Review Board
16 was attached also an exhibit to our pre-hearing statement.

17 CHAIRPERSON REID: And basically in a letter
18 dated May 27th the HPRB recommended approval of the project
19 and concept, but denied the curb cut. That's the gist of it.

20 MR. BROWN: That's exactly it.

21 CHAIRPERSON REID: Okay. Mr. Pernell.

22 MR. PERNELL: Good morning Board members and
23 members of the audience. My name is Daniel M. Pernell, III.
24 I am Chairman of the 6A Commission.

25 My realm of training is 14 commissioners and
26 we're responsible for 28,000 constituents on Capitol Hill.

1 Members of the Board, I would like to say that
2 6A Commission stands up and on its record of serving the
3 public.

4 The 6A Commission has spent so far more than 41
5 hours and about 14 days of their personal time in dealing with
6 BZA and PUD applications in our community.

7 The 6A Commission has been confronted with
8 numerous responsibility and personal issues in the community,
9 and we have tried our best to adhere to those concerns.

10 I would like to say that the ANC Commission has
11 not met all of its responsibility in the community, but we're
12 trying. And most of its responsibility is listening to our
13 constituents in the area. There are institutions and there
14 are business and schools in the area that do not come to our
15 6A Commission meetings. We are posted by law every first
16 Monday -- I mean every first Thursday of the month for these
17 people to attend. We are on the Internet. We're on Channel
18 24, 25, 26, 16, 13 as far as our meetings in the community.
19 We have changed a couple of times from the Midlin Hospital to
20 GO Wilson presently.

21 What I'm trying to say here today is that this
22 application here today came before us on July the 7th, and
23 what we heard at that meeting is the best of knowledge that we
24 know about this concern. But when we have additional concerns
25 coming from constituents in the area, such as Peabody School,
26 we have the right to change our vote. And changing our votes

1 to not to please our constituents but to satisfy them in what
2 they want in their community, what they want in their school.
3 We have the right, the community, the 6A to scrutinize the
4 business in our community. And that's what we're here for.

5 Madam Chair, I'm going to turn it over to the
6 single member district Commissioner Janet Schmidt. She is one
7 of our newest commissioner. She's trying to do her homework
8 in answering the concerns in our community. We have these
9 meetings. We try to do the best we can as commissioners. I
10 just want the public remind -- to remind them of that. We're
11 volunteer, we're doing the best -- we're not the best of
12 knowledge in doing these PUD, but we do the best we can.

13 If there's a concern that comes to me, which
14 did come to me today, as Chairperson I have spoken and concur
15 with Commissioner Janet Schmidt that there's some changes that
16 should be made, and she tried her best to do so. It didn't
17 work in our favor or in the favor of the opposition group.
18 But nevertheless, we're faced here with the Board today to
19 give as much of the facts and information we just received.

20 And now I'll turn it over to Ms. Janet Schmidt.

21 CHAIRPERSON REID: Thank you.

22 MS. SCHMIDT: I would like to thank the Board
23 for allowing a continuation with respect to bringing forward
24 additional facts after speaking to concerned members of the
25 school and the community with respect to safety issues of the
26 children and parking.

1 We will return to the Board a letter indicating
2 what resulted after the ANC-6A reconvenes and meets with
3 members of the community that have come forth today.

4 CHAIRPERSON REID: I'm sorry, Ms. Schmidt, I
5 can't hear you.

6 MS. KING: I can't hear you. I can see your
7 mouth moving, so I know you're speaking. I mean, you started
8 out okay and then your voice went down.

9 MS. SCHMIDT: All right.

10 CHAIRPERSON REID: Remember also that the
11 people in the back of the room also would like to hear.

12 MS. SCHMIDT: I'd like to at this time, again,
13 thank the Board for allowing for a continuation so we can hear
14 from parents of students of the Peabody School, the PTA
15 association and other concerned bodies--

16 CHAIRPERSON REID: Excuse me. We didn't allow
17 a continuation.

18 MS. SCHMIDT: I think -- excuse me. I thought
19 that you were going to keep -- excuse me.

20 CHAIRPERSON REID: It's open.

21 MS. SCHMIDT: Excuse me.

22 CHAIRPERSON REID: That's different.

23 MS. SCHMIDT: And within the 10 day period we
24 will get to you a letter after having the opportunity to speak
25 and meet with parents.

26 And please allow for misstatement. I'm 47%

1 hearing impaired, so I do the best I can. Thank you.

2 CHAIRPERSON REID: Thank you.

3 MR. PERNELL: And Madam Chair, just to in the
4 record besides the 41 hours and the 14 days that the
5 Commission has convened this year since January 7th, 1999,
6 this is not including special meetings called by the Mayor in
7 our single member district or in Ward Six by Council Woman
8 Ambrose. It's not even counting those meetings that we have
9 to attend on our personal time in that community.

10 Also, I would like to say that, again, the
11 timing of our meeting by law since 1974 is posted in Channel
12 24, 25 and 26, 16 and 13. And I have seen it myself, it's
13 there. So, I just want to end it on that note.

14 CHAIRPERSON REID: Thank you, Mr. Pernell.

15 MR. HOOD: Madam Chair, may I ask a question?

16 CHAIRPERSON REID: Yes.

17 MR. HOOD: Are we allowing them 10 days, the
18 ANC 10 days to respond?

19 MS. KING: No. When we come to an end to
20 decide when we're going to hearing this, then we'll determine
21 --

22 CHAIRPERSON REID: We'll determine.

23 MR. HOOD: Oh, okay. I think we already
24 determined that.

25 MS. PRUITT: Madam Chair, for the record, so I
26 can keep this straight, are we accepting the ANC's position,

1 this letter that was in the record or are they --

2 CHAIRPERSON REID: We understand there has been

3 a change and they are going to submit a subsequent letter that

4 reflects the most up to date current position of the ANC.

5 MS. KING: We're going to hold the record open

6 until we --

7 MS. PRUITT: So we should then strike this from

8 the record, is that correct?

9 CHAIRPERSON REID: Not until we receive

10 something else.

11 MS. PRUITT: I guess my question comes then we

12 don't know is -- right now if the ANC is giving great weight,

13 but are you giving great weight to support or not?

14 MS. KING: We're not making a decision today,

15 so we're holding the record open.

16 MS. PRUITT: Okay. Well then I would suggest

17 that in their letter that they send that they ask that this --

18 they rescind their previous letter.

19 CHAIRPERSON REID: We've indicated that

20 earlier.

21 MS. PRUITT: Okay. Thank you. Just wanted to

22 be sure.

23 CHAIRPERSON REID: Thank you.

24 MR. BROWN: Now I'm confused. The letter

25 that's now in the record, it will remain in the record and --

26 CHAIRPERSON REID: That letter will have to

1 stay until we receive something otherwise. But once we
2 receive a letter rescinding that letter and giving --

3 MS. KING: Should we receive a letter
4 rescinding that letter?

5 CHAIRPERSON REID: Should we receive a letter
6 rescinding that letter -- this letter and also giving us the
7 most up to date position of the ANC with a quorum and a vote,
8 then they will be --

9 MS. KING: In a duly advertised meeting.

10 MR. BROWN: And my concern, Madam Chair, is
11 that --

12 MR. PERNELL: Madam Chair, point of order. I
13 believe the state of the District of Columbia --

14 CHAIRPERSON REID: Just a moment, Mr. Pernell,
15 allow him to finish. Mr. Pernell --

16 MR. PERNELL: -- is still speaking and I'm
17 trying --

18 MS. KING: Mr. Pernell.

19 MR. PERNELL: I'm trying to get a point of
20 order. I'm --

21 MS. KING: Excuse me, sir. Mrs. Reid has--

22 MR. PERNELL: Commissioner Schmidt and I are
23 still here and we have a point. The state of the District of
24 Columbia is still sitting here giving a presentation, have
25 been not concluded.

26 CHAIRPERSON REID: Your presentation was

1 concluded --

2 MR. PERNELL: No, it's not. I have another

3 comment to make, and we have an opponent sitting here with us.

4 MR. BROWN: I would like to --

5 CHAIRPERSON REID: Okay. Let's just get this

6 straight.

7 MR. PERNELL: I would like for it to be broken

8 up --

9 CHAIRPERSON REID: Okay. Mr. Pernell.

10 MR. PERNELL: Yes.

11 CHAIRPERSON REID: In the first place, in all

12 instances let's try to be considerate and polite.

13 MR. PERNELL: I'm trying to. But I don't want

14 anyone talking over me and my commissioner, that's all I'm

15 trying to say.

16 CHAIRPERSON REID: All right. Number one.

17 Number two is that if I'm not mistaken, I heard you say that

18 is the end of my presentation and --

19 MS. KING: Indeed you did, Madam Chair.

20 CHAIRPERSON REID: And I then thanked you, and

21 I was under the impression that you had concluded it.

22 MS. KING: In fact, that was what you said.

23 CHAIRPERSON REID: And then Ms. Schmidt --

24 MR. PERNELL: And that was -- it was concluded

25 after I heard this gentleman say something else, and I had

26 something to say to back that up, to end the record at that.

1 And I still want it say when I'm finished hearing what you're
2 trying to tell me.

3 MS. KING: Well, why don't you say it now and
4 conclude your testimony.

5 MR. PERNELL: Okay. If I have the reason that
6 no one else will come up and say anything for me to say
7 anything to be concluded.

8 I would like to say for the record that that
9 letter that you have there presently is based on what the
10 single member district ANC, Ms. Janet Schmidt wants to do and
11 the body will concur with her because she received additional
12 information, I received additional information and we want to
13 concur with her, is her wishes, not the body.

14 MR. HOOD: Let me just ask a question, Madam
15 Chair.

16 Mrs. Smith?

17 MS. SCHMIDT: Schmidt.

18 MR. HOOD: Schmidt.

19 Obviously, I understand you're taking the
20 concerns of your constituents. Have you had a single member
21 district meeting?

22 MS. SCHMIDT: No, and I would like the
23 opportunity for that. Thank you.

24 MR. PERNELL: She got that notice. I didn't
25 tell her the day of -- until July the 7th that it was in her
26 single member district. We're thinking that the information

1 that should have been forwarded to me to give to Janet Schmidt
2 was forwarded to another commissioner by mistake.

3 MR. HOOD: Right. What I understand that the
4 single member district is not getting weight, it's still a
5 process through the ANC process, and I just wanted to put that
6 on the record.

7 MR. PERNELL: Yes.

8 MR. HOOD: The SMD meeting should take place
9 and then and only then should the ANC vote on it as a whole.
10 I just put that on the record.

11 No reflection on 6A, but I just wanted to put
12 that on the record.

13 MR. PERNELL: Right. We did that because Ms. -
14 - Commissioner Schmidt had the understanding that there
15 weren't any opposition. She listened to several groups in the
16 area. She attended several meetings. She didn't have the
17 time to call a single member meeting. And now that we have
18 not done that, we want to do that.

19 MS. SCHMIDT: That's correct that I did not
20 have the opportunity.

21 MR. HOOD: Mr. Pernell, are ANC commissioner
22 paid?

23 MR. PERNELL: I beg your pardon?

24 MR. HOOD: Are ANC commissioners paid?

25 MR. PERNELL: Not one cent.

26 MS. KING: Of course, they never have been.

1 Never have been.

2 CHAIRPERSON REID: Mr. Pernell?

3 MR. PERNELL: Yes.

4 CHAIRPERSON REID: Have you concluded your

5 presentation?

6 MR. PERNELL: Yes, ma'am.

7 CHAIRPERSON REID: Now, let me allow you to

8 leave the table before I ask anyone else to come forward.

9 MR. PERNELL: Okay.

10 CHAIRPERSON REID: So we won't have that kind

11 of a misunderstanding. Thank you very much.

12 Mr. Brown?

13 MR. BROWN: And I didn't want to object or

14 interrupt the ANC's testimony, but I think it's important the

15 point Mr. Hood made, is that this is not the SMD working

16 individually, this is the entire commission. And the

17 opportunity for my client, Mr. Scallan, to participate in

18 that. He participated the first time and there's great

19 concern that he be able to participate. I was most distressed

20 by one particular characterization that Mr. Scallan and myself

21 reviewed as the opponents, and I don't think that one is borne

22 out by the process nor the reality, and I'd like to clear that

23 up with Mr. Pernell and Ms. Schmidt, wherever you are, that

24 Mr. Scallan is not an opponent.

25 MS. SCHMIDT: I understand that.

26 MR. BROWN: Okay. And he's been to the

1 commission before and he wants to come back again and discuss
2 these issues, and that goes also for the Peabody School and
3 others. So I think that's important. But also it's process,
4 that it went through the ANC process and, Mr. Hood, you have a
5 good characterization of it, that a group activity and it
6 needs to continue to be that way.

7 So that, I want to make sure that's on the
8 record.

9 MR. HOOD: Mr. Brown, I want to make sure you
10 understood my point. I just wanted to put that on the record,
11 and I think that the people who live in any particular
12 neighborhood have the right to speak and say how they should
13 shape and mold and try to see their neighborhood come. I'm
14 saying that all the time that community groups are right, but
15 I think that -- see, the applicants can go home but people who
16 live there are already at home.

17 So, I was just hoping that maybe -- because, I
18 mean, ANC 6A has a unanimous vote here in the record. And
19 it's obviously there's at thin line between some few small
20 little problems. So, hopefully, you can work that out before
21 the time limit that we take a vote on it.

22 MR. BROWN: I'm sorry. I think you and I are
23 in complete agreement that the community both at the SMD level
24 is the critical building block to this, but also it is part of
25 a larger community and larger commission. And you and I see
26 eye-to-eye on that, so I don't think there will be any

1 difficulties.

2 Thank you.

3 CHAIRPERSON REID: All right. Now, Mr. Brown,
4 did you wish to have any cross examination of the ANC?

5 MR. BROWN: No, I do not. No, thank you.

6 CHAIRPERSON REID: All right. Then persons in
7 support of the application? Seeing none.

8 Persons in opposition to the application?
9 Please come forth.

10 MS. KING: Would you son like to come up and
11 sit with you?

12 MS. LORD: He just told me I'm bored, I'm
13 getting a big reward.

14 MS. KING: Go for it.

15 MS. LORD: He's a product of our DCPS.

16 My name is Victoria Lord, I'm the Vice
17 President of the PTA for the Peabody School. I want to just
18 explain a little bit about our school, because we're a little
19 bit complicated.

20 We are a D.C. public school, but we have 3
21 campuses to provide for our children. The Peabody campus
22 specifically provides only for pre-K and kindergarten students
23 but it also serves as a collection point for our elementary
24 school students, those are our 1st through 4th graders to come
25 and take a shuttle bus from the Peabody School over to the
26 Watkins Building, which is at 12th and Pennsylvania,

1 Southeast. So it is the site of a lot of coming and going
2 early in the morning and, in fact, that is really the crux of
3 our concern.

4 In asking for the variance Mr. Scallan has
5 claimed that there's a hardship that's been imposed upon him
6 by the denial of a curb cut and the subsequent parking he
7 expected to get out of that.

8 One of the things that has to be recognized is
9 that that curb cut would have provided at most 2 parking
10 spaces. The petition before you is for a variance for 11
11 parking spots, which is a substantially larger number than
12 two. This large number of parking variances is necessitated
13 by the oversize of the building. The building is 38% larger
14 than the lot is zoned for. And as a consequence of that, it
15 will see subsequently more traffic, and the traffic is, as I
16 say, one of our biggest concerns.

17 This is an area which already sees a great deal
18 of traffic in the morning. Not just for the school, but
19 because C Street serves as a main artery for people coming in
20 from Maryland to work at the Capitol and downtown areas. We
21 already have a lot of concern about the speed of the cars that
22 come in through that area. And if you increase the traffic,
23 you only increase the issue.

24 Another consideration that we would like you
25 think about is that the Senate Day Care Office Building on
26 Mass Ave almost directly adjacent to this is opening in the

1 fall of 1999, and that building also will have its own traffic
2 issues and therefore, increase the traffic in that area.

3 One of the claims also made in the application
4 is that there are adequate nearby surface lots to provide
5 parking for cars. In fact, there are no public surface lots in
6 this area. There are surface lots, they are reserved and
7 owned by Medlin Hospital for the use only of their employees
8 and visitors. They are owned and reserved by the Heritage
9 Foundation for the use only of their employees and visitors.
10 And by the standard office buildings for their employees and
11 visitors. There are no nearby surface lots provided for the
12 public, that means random visitors to any of these office
13 buildings.

14 The only parking available is some metered
15 parking across the park, across Stanton Park, a few metered
16 spots. Otherwise you are talking about trying to have people
17 park in the neighborhood on residential streets, which as any
18 resident will tell you, is already incredibly parked up. In
19 fact, as one resident who signed our petition objecting to
20 this variance said to me, she said "I hate the school, too,
21 because you guys come in here and park." We do have shuttle
22 buses, they come in every morning and stop directly in front
23 of the school building to pick up our youngsters and to drop
24 off youngsters. Because of the extremely young age of some of
25 our students, we're concerned that an increase in traffic is
26 going to create a possible problem.

1 We do have a security guard on duty. Our
2 parents are always present when our children collect to wait
3 for the bus. There's always at least one, usually four or
4 five adults there. But, as you know, young children are very
5 impulsive and move quickly, and this is a serious concern for
6 us.

7 The basic concerns that we have are those two.

8 The school hours issue is also something I
9 wanted to address. Our school is feeding site, some of our
10 children come as early as 8:00 in the morning for breakfast,
11 in addition to which we have after-care located at our school.
12 Many of our children stay in that after-care program until
13 6:00 or 6:30 in the evening. In other words, we will have
14 small children getting into and out of cars right in front of
15 the building during exactly those hours at which you would
16 have employees arriving or departing from an adjacent office
17 building. And again, the larger the building the more
18 employees you're talking, and that's really our objection is
19 the oversize of the building and the subsequent increase in
20 traffic.

21 In addition, Mr. McGrath talked about the
22 current use of the building on the corner directly adjacent to
23 the lot. That building he doesn't seem to be aware is used
24 as a day care facility for adult handicapped. They move in
25 and out of that building at different times of the day, and
26 they do use a van and need to park directly in front of that

1 building to provide for the wheelchairs to be lifted in and
2 out of the van. There's an elevator that does that. So
3 that's also a traffic issue that really substantially limits
4 the parking and even the drop off and pick up area right in
5 this area.

6 So, we would really ask that the oversize
7 variance be denied.

8 CHAIRPERSON REID: Thank you.

9 MS. SCOTT: Well, you've covered everything. I
10 was going to cover the last -- couple of new things.

11 My name is Laura Scott. I am the chair of the
12 local school restructuring team for the Capitol Hill Cluster
13 School. Peabody, as Ms. Lord said, is our pre-K and
14 kindergarten campus; that means it serves children only 3 to 5
15 years old. There are 220 children 3 to 5 years old in our
16 building everyday. They're in our building from 8:00 in the
17 morning until 6:00 at least, and they're there for summer
18 programs as well.

19 There is no parking on most of C Street.

20 MS. KING: Excuse me. May I clarify this?

21 MS. SCOTT: Yes.

22 MS. KING: You have 3 year olds who come at
23 8:00 in the morning and stay until 6:00 at night?

24 MS. SCOTT: Yes, ma'am. Yes. It's a very long
25 day.

26 MS. KING: And this is a public school

1 facility?

2 MS. SCOTT: Yes, ma'am, it is. It's public
3 pre-K and kindergarten and it has before and after care as
4 well.

5 CHAIRPERSON REID: That would be after care,
6 before and after care?

7 MS. SCOTT: And is a feeding site as well.

8 MS. KING: You have 225 students, how many are
9 there at 8:00 in the morning.

10 MS. LORD: It's almost impossible to tell
11 because the number does change. The children that come at
12 8:00 in the morning are two separate groups; the feeding group
13 and then we also have a safety patrol which are the older
14 students who hold -- the kindergarten students who hold the
15 door open for the pre-K students so their fingers don't get
16 mashed. And they come at 8:00 in the morning as well, and
17 that's about 15 or 20.

18 MS. KING: Well, can you guess how many of the
19 3 to 5 year old are there?

20 MS. LORD: Of the 3 to 5 year olds, I would say
21 between 20 and 30 in the morning, at 8:00 in the morning.

22 MS. KING: Approximately 10 percent?

23 MS. LORD: Yes.

24 MS. SCOTT: And a good deal more in the
25 afternoon.

26 MS. KING: And how many are there in the

1 evening?

2 MS. LORD: That really depends, because the
3 after care varies wildly. I would say anywhere from again 20
4 to 30 all the way up to 50 if there are special programs after
5 school.

6 MS. KING: And that's also the 3 to 5 year old
7 age range?

8 MS. LORD: Yes. Yes, it is.

9 MS. KING: Thank you.

10 MS. SCOTT: Which was one of our primary
11 objections to a curb cut at all cutting across where the
12 little children were working.

13 Again, C Street from almost the edge of that
14 building all the way to the corner of 5th Street there is
15 already posted no parking during school hours to provide for
16 our shuttle buses and drop off and pick up. And there's
17 constant encroachment on that no parking zone and requiring
18 the buses to pull up in a lane of traffic to load our
19 children. Adding an oversized building that is for business
20 use would, obviously, add to that parking congestion.

21 There's also no parking right around the corner
22 on 5th Street for half a block because of the school, which
23 adds enormous parking pressures to the neighborhood. This is
24 not like the previous case on Benning Road where apparently
25 there are miles and miles of available parking. This is
26 Capitol Hill and parking is a nightmare.

1 Parents dropping off their children in the
2 morning double park the entire width of -- the entire length
3 of 5th Street from C Street to Constitution already.

4 MS. KING: You're permitted to block the street
5 like that?

6 MS. LORD: It doesn't block the street and
7 we're not permitted to, and we're ticketed. A lot of these
8 parents are ticketed constantly. I fortunately live 2 blocks
9 away, so we walk. But it is an extremely -- it's an area that
10 suffers extremely strong pressure in the early morning and
11 late --

12 MS. KING: A lot of the pressure is coming from
13 Peabody School?

14 MS. LORD: Yes, it is. Yes, it is. And, as I
15 say, the residents of the area, and I do reside 2 blocks from
16 this area, object to it. We love our school but we hate the
17 parking.

18 MS. SCOTT: I would also call to your attention
19 the really -- the different nature of the 400 block of C
20 Street as opposed to the 500 block of C Street that Mr.
21 Scallan is using for comparison. Almost the entire 400 block
22 is the school and the playground. There is this little tiny
23 bit of commercial development on the corner. The playground,
24 the school is the whole block. It is not a commercial block.
25 It is not a place with a lot of other businesses. This is not
26 a -- a huge office building is particularly consistent with

1 the nature of the block.

2 Further, the size of the lot is, obviously, an
3 impediment given current regulations. The lot was this size
4 when it was purchased, the regulations were in place when it
5 was purchased. It's a small lot. You can't build a great big
6 building on a small lot without having impact; that's why
7 there are zoning regulations.

8 Finally, I would note that the parking variance
9 on the posted notification for this hearing, parking was not
10 originally listed on the notification. That was amended, but
11 it was not amended within the appropriate time frame. I
12 submit that because as parking is such an issue in the
13 neighborhood, you would be hearing much more from neighborhood
14 residents about parking had that been properly posted.

15 CHAIRPERSON REID: Thank you. All right.

16 MR. HOOD: Could I ask a question?

17 CHAIRPERSON REID: Yes.

18 MR. HOOD: To the two young ladies, and forgive
19 me for not remembering your name. But are you objectionable
20 to anything being built?

21 MS. LORD: No, of course not. This is private
22 property and Mr. Scallan's more welcome to build on this lot.
23 What we're objecting to is the fact that he's designed a
24 building that's 38% percent larger than the lot is zoned for
25 with a subsequent and, obviously, completely inevitable
26 increase in traffic to the area.

1 MS. SCOTT: And the resulting parking
2 requirement of a building that large.

3 MR. HOOD: Okay. I'm trying to think, does the
4 area have zoned parking?

5 MS. SCOTT: Yes.

6 MR. HOOD: Does it start on 4th and C?

7 MS. SCOTT: The whole neighborhood is zoned
8 parking, with the exception of where there are meters.

9 MS. LORD: There are meters across the street,
10 which is --

11 MS. SCOTT: Across the park.

12 MS. LORD: Across the park, which is where the
13 businesses are located in that are.

14 MR. HOOD: And just reemphasize for me how you
15 see if this project built, how it will effect traffic again in
16 the morning?

17 MS. LORD: Well, one of the things that you
18 can't really see very well from this plot is that this corner
19 is actually -- if I might get up and just stand straight a
20 little bit.

21 MR. HOOD: Sure.

22 MS. LORD: This particular corner of the
23 building sees the intersection of Maryland Avenue at an angle.
24 Massachusetts Avenue comes in and dumps onto 4th.

25 MR. SCALLAN: You're at the wrong side. You're
26 at the wrong side.

1 MS. LORD: Am I -- sorry. Okay. Over here.
2 Okay. So then Maryland comes from here. Massachusetts Avenue
3 comes shooting up here, dumps all of its traffic onto 4th
4 Street, which subsequently dumps on to C Street.

5 So, you have all of these intersecting streets
6 coming together it would carry heavy traffic in the morning.
7 Coming together and shooting down C Street, which is at that
8 point 4 lanes wide, but because of an island it's all sort of
9 trodding very rapidly. And it's a continual concern for us,
10 as I say, we do have parents posted out there. And to my
11 knowledge, there's never been an accident, but if you keep
12 increasing the amount of -- increasing your odds.

13 MR. HOOD: My last question, I understand that
14 he allowed you to use the land. What did you use the land
15 for?

16 MS. LORD: The land has been used for gardening
17 projects for the science school. Our school is actually a
18 special school. It's an early childhood education center.
19 Some of our teachers have an expertise in teaching very young
20 children science, and we've gardened in that area, although
21 for the last year or so we haven't. But one of the projects
22 that the children do is they plant seeds, they see what comes
23 up, they actually roast the corn that they grow. They planted
24 corn again this spring in a different area of the playground
25 and they'll be roasting it in the fall at their own little
26 Thanksgiving banquet.

1 They learn physics as well as environmental
2 science there as well. They learn things about how water
3 works and how dirt moves when you pour water on it, and all
4 those wonderful things. It's great.

5 MR. HOOD: Okay. Thank you.

6 CHAIRPERSON REID: All right. Now, have you --
7 is there any cross examination of these two witnesses?

8 MR. BROWN: I don't wish to cross examine. I
9 would like to invite both these two individuals to get
10 together with Mr. Scallan as soon as possible. That's very
11 much his desire. Maybe bring Commissioner Schmidt involved.

12 CHAIRPERSON REID: Closing remarks by the
13 applicant? In all instances, we like to try to encourage the
14 applicant and anyone opposing the ANC to try to come to some
15 mutual meeting of the minds, some resolution of any issues.
16 And then to cooperate wherever it is that you all come to us,
17 and that of course, makes it a lot easier for us to come to a
18 decision.

19 MR. BROWN: And I think that's exactly where
20 the parties will be proceeding. I would just like to make
21 some closing remarks generically.

22 Putting aside the issues that are to be
23 discussed, I think you'll see based on the Board's previous
24 experience as well as the testimony provided here that we've
25 provided a compelling case with respect to the practical
26 difficulties that are inherent in this property and its

1 location in Capitol Hill, in the Capitol Hill Historic
2 District and the Capitol Hill overlay district. And in
3 relationship to the current zoning as well as the
4 Comprehensive Plan Development that, again, focused on those
5 issues that this project can go forward in a way that protects
6 and maintains those. Leaving aside, which obviously we're
7 going to have discussion with the ANC and the Peabody School
8 officials, and then be able to further supplement the record.
9 So, I'd like to leave it at that.

10 CHAIRPERSON REID: Well, let me ask you this
11 one question, and that is with regard to the curb cut part of
12 the argument may be on the opposite with that, you would not
13 be allowed any parking by virtue of the government decision of
14 not allowing the curb cut. If it, in fact, it's a historic
15 district, so there is no parking requirement, per se, does
16 that mean that they it would not allow --

17 MS. KING: It's a contributing structure.

18 MR. BROWN: Yes. Can I clarify? I'd be happy
19 to. They're two separate but interrelated issues.

20 CHAIRPERSON REID: Okay.

21 MR. BROWN: In a historic district or with a
22 historic landmark, you are eligible for a parking and loading
23 waiver providing that the property contributes to the
24 character of the historic district. In this case because
25 we're talking about new construction, we don't have a building
26 that's contributing to the character --

1 CHAIRPERSON REID: Oh, it has to be an existing
2 building?

3 MR. BROWN: If the building were here and he
4 was adding to it and asking for the exact same variance
5 relief, parking would not be an issue potentially because of
6 the parking and loading waiver.

7 CHAIRPERSON REID: Yes.

8 MR. BROWN: On the issue of the curb cut,
9 because the Historic Preservation Review Board with their
10 jurisdiction in the historic district denied permission for a
11 curb cut, there is no ability for Mr. Scallan and the project
12 to gain access to the site and the zoning regulations require
13 that you gain access from a public street. So that he's
14 landlocked. Regardless of his desire to provide parking, he
15 has no way to get from the street to his property, and so he's
16 unable to, physically and legally unable to.

17 CHAIRPERSON REID: Well that's where I'm
18 difficulty comprehending the Historic Preservation Review
19 Board's support of the application. Isn't that contradiction?
20 They supported it but at the same time they're not allowing
21 access to the --

22 MR. SCALLAN: Can I clarify?

23 MR. BROWN: Sure.

24 MR. SCALLAN: They supported the bulk and
25 density of the building. They approved a building that's --
26 and 40 feet tall.

1 CHAIRPERSON REID: Well, that's fine.

2 MR. SCALLAN: And with respect to the parking,
3 they have denied me any parking. I think that in every case
4 on Capitol Hill in development over 20, 30 years you cannot
5 provide enough parking in any of these small sites to strictly
6 meet the requirements of the zoning regulations.

7 CHAIRPERSON REID: Well, that's not my
8 questions, Mr. Scallan. My question was I don't understand
9 why the Historic Preservation Review Board can support their
10 application in regard to you said the bulk and the height --

11 MR. SCALLAN: Right.

12 CHAIRPERSON REID: And not allow access to the
13 site. That confuses me. I'm not a zoning specialist, but --

14 MR. BROWN: Well, they have a slightly
15 different -- they have a different mandate.

16 CHAIRPERSON REID: I'm trying to kind of
17 grapple with understanding this.

18 MS. PRUITT: Madam Chair, we actually and I
19 believe counsel, earlier this year you had a case where a
20 person was landlocked on Capitol Hill and they required a
21 variance from parking.

22 CHAIRPERSON REID: It was on Pennsylvania
23 Avenue.

24 MS. PRUITT: Correct.

25 CHAIRPERSON REID: I remember that.

26 MS. PRUITT: And HPRB refused to give them a

1 curb cut.

2 CHAIRPERSON REID: But it seems like they could

3 -- in that instance --

4 MS. PRUITT: They couldn't go through the alley

5 either because it was a private alley, so there was --

6 CHAIRPERSON REID: But all they needed was to

7 get permission from the people who had the condo.

8 MS. PRUITT: No, they couldn't because it was a

9 private alley.

10 CHAIRPERSON REID: I know, but --

11 MS. PRUITT: And it was never granted, so they

12 --

13 CHAIRPERSON REID: No, it wasn't granted but

14 they did have an option. But in this instance there seems not

15 to be an option.

16 MS. PRUITT: But essentially for a zoning

17 regulation it is a landlock thing.

18 MS. KING: Well, in this case you tried to get

19 accessed through an alley and were denied it, is that correct?

20 MR. SCALLAN: That's correct.

21 MS. PRUITT: The point is though is that the

22 zoning regulations can be in opposition to historic

23 preservation issues and not be incorrect. It's a very bizarre

24 way it works, but that's it. And historic preservations

25 issues are policy issues. Zoning's are regulations.

26 CHAIRPERSON REID: All right. That doesn't

1 make a lot of sense, but okay. That's just the way it is.

2 MS. PRUITT: Exactly.

3 CHAIRPERSON REID: All right. Thank you.

4 Mr. Brown, I think that we have agreed to allow
5 time for the PTA and ANC to submit subsequent reports to us
6 and Mr. Hart will give us a time line so that we can --

7 MS. KING: Well, and I think that Mr. Brown and
8 his client have to be given time to respond to anything --

9 CHAIRPERSON REID: Well, Mr. Hart got to give a
10 time line for that and then we will determine what date will
11 be set for a decision.

12 MS. PRUITT: Well, if you'd like to hear this -
13 - if you'd like to make a decision date on September 8th,
14 submissions and the letter from the ANC, the placement letter,
15 would be due on September 25th to responses -- I'm sorry.
16 August 25th with responses to the submission and the ANC
17 letter by September 1st.

18 MS. KING: I have in my calendar that we have a
19 meeting on the 1st of September.

20 MS. PRUITT: September 8th.

21 CHAIRPERSON REID: She erroneously said the 1st
22 -- right exactly.

23 MS. KING: We set a special hearing for the
24 waste management on the 22nd of November because we were
25 meeting, we were told, on the 1st and the 15th.

26 CHAIRPERSON REID: Don't you mean September?

1 MS. KING: No, I mean at our last meeting 2
2 weeks ago we set a special meeting the 22nd of September to
3 hear waste management because, as Paul told us we were meeting
4 on the first Wednesday and the third Wednesday.

5 MS. PRUITT: I can't speak to that, I wasn't
6 here and unfortunately we don't have transcripts that can go
7 back to that. But the September 8th date was agreed upon by
8 the Board.

9 CHAIRPERSON REID: That's the first Wednesday,
10 the 8th?

11 MS. PRUITT: No, it's the second Wednesday. A
12 few weeks before that because it's the Wednesday after Labor
13 Day and not before Labor Day and there were some issues about
14 whether or not everybody would be back in town, and that was
15 why it was decided that it would be on the 8th on that
16 September. And public hearing notice, which went out 40 days
17 ago.

18 MS. KING: Well, I must not have been here when
19 that was --

20 CHAIRPERSON REID: The 8th is the second
21 Wednesday?

22 MS. PRUITT: Yes. The public hearing notice
23 went out 40 days ago, so it's already been printed.

24 CHAIRPERSON REID: No. We should be clear,
25 we're not meeting on the first Wednesday.

26 MS. PRUITT: No, it was decided that on that

1 particular it would be the 8th.

2 MS. KING: Okay. So we're going to hear waste
3 management and our full agenda for the 22nd all in one day?
4 We set a special date of the 22nd for waste management and we
5 gave them that information at the meeting two weeks ago today.

6 MR. HART: I'll have to check on that.

7 MS. KING: I can promise you, I've got it
8 written in my calendar.

9 MR. HART: I will check on it. I can see where
10 it was done that way because normally you meet on the first
11 and the third Wednesday of each month.

12 CHAIRPERSON REID: But instead we have the
13 second Wednesday.

14 MR. HART: Second and third -- second and
15 fourth.

16 CHAIRPERSON REID: Okay.

17 MS. KING: And then we will not be hearing
18 waste management until October, is that correct? You're going
19 to reschedule waste management?

20 CHAIRPERSON REID: Yes, waste management was
21 supposed to have a day all to itself.

22 MS. PRUITT: You mean you're going to schedule
23 the decision?

24 MR. HART: All by itself, yes.

25 MS. KING: The date was set for waste
26 management to have the 22nd.

1 MR. HOOD: It was set for the 22nd, because I
2 was present when we made that date.

3 MS. KING: Absolutely.

4 CHAIRPERSON REID: And that's a third
5 Wednesday. Well, we're going to have schedule a day for waste
6 management. I don't know how that happened, but nonetheless.
7 What's the last Wednesday in September?

8 MR. HART: Last Wednesday is the 29th.

9 CHAIRPERSON REID: Somehow we need to make that
10 adjustment.

11 MR. PERNELL: Madam Chair, I understand that we
12 have to have a response by August 25th.

13 CHAIRPERSON REID: Correct.

14 Mr. Hart --

15 MR. PERNELL: The ANC, for the record, the ANC
16 are out in August. None of us will be in town. We're not
17 going to call a special meeting, so I want to say is it okay
18 for the single member district to address a letter to the
19 concerns that we've had here today.

20 MS. PRUITT: It would not be given great
21 weight. I mean, our regulations require that it be.

22 MR. PERNELL: We don't meet until September.

23 MS. PRUITT: So that's an issue we need to deal
24 with. I mean, if the Board then would -- if they want to
25 consider the ANC based on what you're stating, means it would
26 have to go on our October agenda.

1 CHAIRPERSON REID: There are two things. You
2 don't think that in the month of August there could be a
3 special meeting.

4 MR. PERNELL: From January 7th, Madam Chair,
5 we've had 3 meeting a month already taken out of personal time
6 and from work, and they're not being compensated for it. They
7 do not, everyone has said the same, when they found out that
8 we were out in August, that's when all of them planned their
9 vacation for August.

10 CHAIRPERSON REID: We'll fix that time because
11 until the ANC can meet, we cannot -- you know, we don't have
12 another letter to replace this letter.

13 MR. PERNELL: That would be up to the single
14 member Janice Schmidt, and I don't know if you're going to be
15 out of town in August.

16 MS. SCHMIDT: Just until August -- I'll be
17 available after --

18 MS. PRUITT: But that is the understanding that
19 the single member district letter would be coming as a letter,
20 it would not carry the great weight as a full ANC.

21 MS. SCHMIDT: We have a regular meeting
22 scheduled in September.

23 MR. PERNELL: In September.

24 MR. HOOD: When is your regular meeting?

25 MR. PERNELL: I think it's September the 7th,
26 if that's the first Thursday in September.

1 CHAIRPERSON REID: The second is the first
2 Thursday.
3 MR. PERNELL: The 2nd is the first Thursday.
4 MS. PRUITT: That's just before Labor Day, so I
5 don't know if you meet.
6 MR. PERNELL: Is Labor Day, what, on a Monday?
7 We'll still meet.
8 CHAIRPERSON REID: Yes, August is over, so
9 vacation should be out of the way, right?
10 MR. PERNELL: Monday is the holiday, that's the
11 --
12 CHAIRPERSON REID: The 6th.
13 MR. PERNELL: You said the first Thursday of
14 September is the second?
15 CHAIRPERSON REID: Yes.
16 MR. PERNELL: Yes, we meet.
17 CHAIRPERSON REID: Okay. You meet at that
18 time.
19 MR. PERNELL: We had that before.
20 MR. BROWN: So, Madam Chair, I'm getting
21 concerned, but under that schedule I think we could go forward
22 on decision on the 8th.
23 MS. PRUITT: Well, that's if you then waive
24 your right for 7 days to respond to the ANC, because that
25 really is what's being --
26 MR. BROWN: I'll waive my right to respond. We

1 can proceed in that fashion. So that if they meet --

2 CHAIRPERSON REID: So you can do it -- you can
3 respond in less than 7 days.

4 MS. PRUITT: That will be less than two days
5 because we meet on the 8th. No, I am sorry, it would be less
6 than 7 days. We would like to have it probably by the Friday
7 so we can get out some packages.

8 CHAIRPERSON REID: Wait, wait.

9 MS. KING: However, since they are being so
10 accommodating, there is no reason we can't waive our rules in
11 order to receive it even on the day of our hearing. I mean,
12 presumably they are not going to write --

13 CHAIRPERSON REID: Well, the next day is just
14 not --

15 MR. HOOD: Madam Chair, I believe we should be
16 fair across the board. I am concerned about the two groups
17 getting together, the applicant and the community working
18 together. I hear us talking about the time, but I don't see
19 that we will be making time for that resolution. So like you
20 said, Madam Chair, our decision will be a lot easier --

21 MR. SCALLAN: Mr. Hood, I am available to meet
22 --

23 CHAIRPERSON REID: From this day on the 21st of
24 July, all of August and into September, they have the time to
25 try to get together to have this meeting.

26 MR. HOOD: Let me just say this. This is

1 probably far-fetched. But a lot of community groups and other
2 groups, whether the group is getting paid or not, they are not
3 going to do a whole lot of work in August. Let's face the
4 reality of it. I know the Zoning Commission, we don't even
5 have a meeting in August. We plan our vacation -- I am not
6 sure about the BZA, but that is something I think we need to
7 take into consideration.

8 MR. PERNELL: Madam Chair, 6A has taken that
9 under consideration. We are volunteer and we have worked
10 extremely from January 7 to the present on special PUDs that
11 came before us by way of the BZA. So we are not going to make
12 any exception in August. We are allowed that under the law
13 and we are going to continue with that. That doesn't preclude
14 the body here to meet with the single member ANC to get that
15 meeting on and bring it back for a September vote from the
16 body of the 6A Commission.

17 MR. HOOD: As long as everybody -- all players
18 feel confident.

19 MS. PRUITT: Madam Chair, could I hear some
20 clarification for the record so that we will be sure
21 everything gets in? ANC meetings on September 2, is that
22 correct?

23 MR. PERNELL: Is that the first Thursday?

24 MS. PRUITT: Yes.

25 MR. PERNELL: Correct.

26 MS. PRUITT: When would you be able to get your

1 report into the office?

2 MR. PERNELL: The very next day.

3 MS. PRUITT: Friday? Because Monday is a
4 holiday. I am just trying to be sure. Excuse me one second.
5 Once Commissioner Janet Schmidt has had a meeting in her
6 community sometime in August when she is off her vacation,
7 then she will bring that as a recommendation from her single
8 member district to the body of 6A on the 2nd. We will vote on
9 it at that regular meeting and I will forward it. I already
10 have the letter drafted of what we are probably going to say
11 and the gist of what she is going to say and we will forward
12 it.

13 MS. PRUITT: So you will that submitted to this
14 office by September 3, that Friday?

15 MR. PERNELL: September 3.

16 MS. PRUITT: I just wanted to be sure.

17 MS. KING: Can you fax it to Mr. Brown? Mr.
18 Pernell, can you fax a copy -- when you fax it over here, can
19 you fax a copy to Mr. Brown?

20 MR. PERNELL: I will bring it down personally,
21 Madam Chair.

22 MS. KING: I am not the chair. To Mr. Brown?

23 MR. PERNELL: I know. But at one time you
24 were.

25 MS. KING: To Mr. Brown?

26 MR. PERNELL: Mr. Brown? Specifically to Mr.

1 Brown?

2 MS. PRUITT: He is the party. I mean, he is
3 the applicant. So if you can serve it on the applicant or fax
4 it to him, that would be very helpful. And then the Board is
5 waiting to let Mr. Brown submit anything up to the day of the
6 meeting, correct?

7 MR. PERNELL: Okay. My first responsibility is
8 to get a copy to the BZA, right?

9 MS. PRUITT: Both.

10 MS. KING: Both.

11 MS. PRUITT: Because he has -- he is waiting --

12 MR. PERNELL: I never had this put on me
13 before. I know I have a responsibility by law to respond to
14 the BZA, but no other parties. But --

15 MS. PRUITT: Well, that is because we are also
16 -- we are shortening the time.

17 MR. PERNELL: I will -- since I have Peabody
18 here and I am trying to be fair to the community, I will do
19 that.

20 MS. KING: Oh, you are wonderful.

21 MR. PERNELL: This has never been upon me
22 before.

23 MS. PRUITT: For the record, Madam Chair, then
24 you are going to allow Mr. Brown up until the meeting date to
25 respond, is that correct?

26 CHAIRPERSON REID: Yes.

1 MS. PRUITT: I just wanted to be sure so we
2 have it in there. If it is ever contested, we will have what
3 is needed.

4 CHAIRPERSON REID: Now, is the PTA going to
5 submit something through the ANC or are you --

6 MS. LORD: We will -- Madam Chair, we will
7 submit our own separate letter. We already did submit a
8 petition signed by 70 of our members --

9 MS. KING: I am sorry, what?

10 MS. LORD: I am sorry. We will submit a letter
11 detailing our objections if you would like.

12 MS. KING: By the 25th of August?

13 MS. LORD: Absolutely. Absolutely. I could do
14 it by next week. And we already did submit a petition and you
15 should have copies of that in your application.

16 MS. KING: That has not been received. I
17 haven't seen it.

18 MS. LORD: I submitted it yesterday in person.

19 CHAIRPERSON REID: No, we don't have that.

20 MS. PRUITT: Yes, we do. We didn't have it --
21 we had no -- there was no case number or anything on it. We
22 had a hard time identifying that.

23 MS. LORD: I am sorry. I gave it to the young
24 woman and told her the case number.

25 MS. PRUITT: It was not written on there. We
26 can put it in the record. I looked through that and I asked

1 everybody in the office.

2 MS. LORD: I was just making sure you had it.

3 Thank you.

4 MR. HOOD: Madam Chairman, I thought the reason
5 that the ANC rescinded their position was because of the
6 position of the school. I thought they would be working
7 together along with the school. I may be incorrect. But to
8 submit your letter --

9 MS. LORD: We will work also with the ANC. We
10 would like to work also with the ANC.

11 MR. PERNELL: I just wanted an objection to
12 what you said. Also, because I thought that once we work out
13 an agreement from the two bodies meeting that there would be
14 no need for your letter. We will work it out so that we can
15 make a vote on it.

16 CHAIRPERSON REID: Right. Well, if that is the
17 way you all want to do it, then the ANC will --

18 MR. PERNELL: If Peabody is going to submit a
19 letter of opposition, there is no need for the ANC to convene.

20 MR. HOOD: So you are saying the ANC would
21 continue to keep their position?

22 MS. SCHMIDT: I think Mr. Hood's point is he
23 would prefer that you didn't send a letter tomorrow or next
24 week but until after the parties have had an opportunity to
25 meet.

26 MS. LORD: Okay. That is fine.

1 MS. SCHMIDT: That is what I think he is
2 saying.

3 MS. PRUITT: Excuse me, Madam Chair, but we
4 have a procedural issue now again.

5 CHAIRPERSON REID: All right.

6 MS. PRUITT: The applicant has the right to
7 respond. So we need to get information -- if you are going to
8 keep this on the September 8 meeting, the applicant has the
9 right to respond -- has 7 days to respond. We are waiving
10 that requirement for the ANC because they don't meet in
11 August. So that is a special exception. But if Peabody or
12 the school would like to participate in the process and being
13 able to follow due process and let the applicant have his
14 right, then they have to have it in by September 25.

15 MR. HOOD: August 25.

16 MS. PRUITT: I am sorry, August. In order to
17 make it September 8.

18 MR. PERNELL: Well, we hope that the applicant
19 will -- excuse me, Madam Chair, we hope that the applicant
20 will attend that meeting along with us so that they would be
21 privy to any information said at that meeting. And,
22 therefore, they will be abreast of what is going on and be
23 able to track, and I will make sure that we follow up as the
24 chairperson that we are saying the same thing and that is what
25 the purpose of the --

26 CHAIRPERSON REID: Mr. Brown, is that all right

1 with you?

2 MR. BROWN: It is fine that the Peabody group
3 would like to submit a separate letter. I would like to have
4 that in advance so that I am not responding. Number one, they
5 may be the same or they may not. So I would like to take --

6 CHAIRPERSON REID: August 25th?

7 MR. BROWN: Staff's suggestion and have a
8 deadline for the letter.

9 CHAIRPERSON REID: Okay. August 25 for your
10 letter to be in. Thank you. All right. I think that that
11 basically sums up and wraps up this difficult case.

12 MR. BROWN: Thank you, Madam Chair.

13 CHAIRPERSON REID: Thank you very much. All
14 right. The next case, Mr. Hart? 16473?

15 MR. HART: Application No. 16473 of Parkmont
16 School, Inc., pursuant to 11 DCMR 3108.1, for a special
17 exception under Subsection 206 to establish the use and to
18 continue the use of a private secondary school for 65 students
19 and 8 staff and under Section 3107.2 for a variance for
20 renewal of the parking, basement, first and second floors in
21 an R-1-B District at premises 4842 16th Street, N.W., Square
22 2654, Lot 34. Would all persons intending to testify please
23 rise and raise your right hand?

24 (WITNESSES ARE SWORN.)

25 CHAIRPERSON REID: All right. Give your name.

26 MS. COOK: My name is Susan Cook and I am with

1 Hogan and Hartson and we represent the applicant, Parkmont
2 School.

3 MR. MCCLAIN: My name is Ron McClain and I am
4 the Director of the Parkmont School.

5 CHAIRPERSON REID: There is no -- there does
6 not appear to be anyone here in opposition to your case and we
7 have not received any letters.

8 MS. COOK: That is correct.

9 CHAIRPERSON REID: So in that instance, what
10 the Board typically does is to allow you to stand on the
11 record of your submission, because you are basically asking
12 for a renewal, right? And just give us the salient points so
13 we can get through this relatively quickly. Okay? If you
14 have something you would like to say or if you would like to
15 put remarks on the record, you are perfectly welcome to do so.

16 MR. MCCLAIN: No. Nothing much. I have been
17 the director of the school for the last eight years and I
18 think we have done a good job of working collaboratively with
19 our neighbors.

20 CHAIRPERSON REID: All right, give your
21 address.

22 MR. MCCLAIN: The address of the school is 48 -
23 -

24 MS. KING: No, your home address.

25 CHAIRPERSON REID: I am sorry, give your name
26 and your address.

1 MR. MCCLAIN: My name is Ron M C C L A I N.
2 And my address is 14 Jefferson Avenue, Takoma Park, Maryland.

3 CHAIRPERSON REID: And give your title.

4 MR. MCCLAIN: And I am the Director of the
5 Parkmont School.

6 CHAIRPERSON REID: All right. Do you have some
7 remarks that you would like to make?

8 MR. MCCLAIN: Actually, I have nothing to add
9 to the petitions we have written. We have been working very
10 closely with our neighbors over the time of my directorship of
11 the school and I am pleased to see that we have by and large
12 their support.

13 MS. KING: I would note for the record, Madam
14 Chair, that we have a number of letters from neighbors written
15 with great care and attention to detail and strongly in
16 support of this school.

17 MS. COOK: And, Madam Chair, we would like to
18 request if the Board is inclined to approve our application
19 that the variance be extended to five years instead of five.

20 CHAIRPERSON REID: Do you have a previous
21 order?

22 MS. KING: I have not the entire previous
23 order, but I have the conditions from the previous order,
24 which are that the operation of the school should be limited
25 to the Somerset School. It is the identical school? You just
26 changed the name?

1 MR. MCCLAIN: It changed its name.

2 MS. KING: There has been no change in the
3 management or the Board of Trustees except for the usual
4 turnaround? I mean, it is the same legal entity?

5 MR. MCCLAIN: For the structure and purpose,
6 absolutely.

7 CHAIRPERSON REID: Okay.

8 MS. KING: The number of students shall not
9 exceed 65 and the number of faculty and staff shall not exceed
10 8. No non-school related activities on the premises.
11 Landscaping in accordance with the exhibit that was in the
12 record earlier. It was for the period of five years. Three
13 parking spaces provided on the site. Do you actually provide
14 more than three or is three the number you have? And there
15 should be no enlargement of the existing paved area on the
16 site.

17 CHAIRPERSON REID: I have one question.
18 Generally, the ages of your students are what?

19 MR. MCCLAIN: They are middle school and high
20 school students.

21 CHAIRPERSON REID: What are the ages?

22 MR. MCCLAIN: 12 to 18 or 11 to 18.

23 CHAIRPERSON REID: 12 to 18?

24 MR. MCCLAIN: Junior high school and high
25 school.

26 CHAIRPERSON REID: Let me see, we have ages in

1 the conditions --

2 MR. MCCLAIN: I am not sure we --

3 MS. KING: It just says students are 65 and the
4 faculty and staff not to exceed 8.

5 MR. MCCLAIN: 65

6 CHAIRPERSON REID: Oh, okay. All right.

7 MS. KING: Do you have a formal arrangement
8 with Carter Barron for parking? Because you mentioned that
9 when your students -- because when you get into the secondary
10 school, a lot of students as soon as they legally can get
11 cars. And you mentioned that you use the parking at Carter
12 Barron. Do you have a legal arrangement to do that?

13 MR. MCCLAIN: Not that I am aware of. We had
14 two or three students as an average over the last five years
15 who used that parking lot. There is about 25 to 30 cars in
16 that lot on a daily basis. It has space, I am guessing, for
17 between 300 and 700 cars.

18 MS. KING: Yes. When there is an event going
19 on and so forth, it is packed.

20 MR. MCCLAIN: Right. And my experience with
21 that just in the eight years that I have been there is that
22 that happens primarily during the professional tennis
23 tournament which takes place fortunately from our point of
24 view during the summer.

25 MS. KING: Yes. And also the Shakespeare
26 Festival and so forth. But again, that is at night and during

1 the summer.

2 MR. MCCLAIN: Right.

3 CHAIRPERSON REID: Now you said that you would

4 like to ask for additional time.

5 MS. COOK: If that would be possible.

6 CHAIRPERSON REID: Okay. Now your current BZA

7 order expired, did it not?

8 MS. COOK: It did.

9 CHAIRPERSON REID: When?

10 MS. COOK: It was issued in August of 1991 and

11 it expired in August of 1996. Parkmont filed an application

12 in July of 1996 to start the process for the renewal and due

13 to a technical glitch in the application, it was required to

14 engage in a series of correspondence back and forth with the

15 BZA and the BLRA and has finally gotten the opportunity to

16 come before you today.

17 CHAIRPERSON REID: So your delay has been as a

18 result of getting through the red tape and the bureaucracy?

19 Is that what you are saying?

20 MS. COOK: A combination of it, yes. To some

21 extent, that is true. And to some extent, it has also been a

22 result of the individual who was handling the matter for the

23 firm has subsequently left the firm.

24 CHAIRPERSON REID: But also you had another

25 order in 1983 that you renewed in 1989. And I think that was

26 also --

1 MS. COOK: The one that was renewed in 1989 was
2 -- the hearing occurred in 1989. But if you look at our
3 application as attached, the 1989 hearing, the order was not
4 issued until 1991.

5 CHAIRPERSON REID: Okay.

6 MS. COOK: For whatever reason.

7 CHAIRPERSON REID: How much time are you
8 requesting?

9 MS. COOK: We would request 10 years.

10 CHAIRPERSON REID: Well, I would like to see
11 that your renewal -- that your renewal fee is done in a timely
12 manner. So given your history, we may have to -- just let us
13 give some thought to that for the moment. Let us do the rest
14 of the case. Do you have any other statements? Questions for
15 them?

16 MR. HOOD: Madam Chair, the only thing I would
17 say is I too am concerned about the 10 year piece. Was that
18 put on the table when you -- with anyone in the community
19 about 10 years before you come back in front of the BZA? Was
20 that put out before you came here today? As opposed to
21 getting what you had, 5 years? As opposed to -- you had 5
22 years I believe, right?

23 MS. KING: Yes, but the 5 years expired three
24 years ago.

25 MR. HOOD: Right. I understand that. But I am
26 saying now they are asking for 10. Has that been put out to

1 anyone in the community? Have you --

2 CHAIRPERSON REID: The ANC and --

3 MR. HOOD: ANC or anyone.

4 CHAIRPERSON REID: Has they got a feel --

5 MR. MCCLAIN: You know, that is actually a very

6 fair question in terms of the procedure. Because the

7 discussion at the ANC was along the lines of us simply

8 renewing. And as you read the conditions of these, one of the

9 conditions was the five years. That was one of the 8

10 conditions that got carried over. So I think it would be fair

11 to say that the ANC didn't have -- was not given the

12 opportunity. And I, myself, as the only person who went to

13 the ANC and I also went to the single member meeting before

14 that and had discussions that I thought were --

15 CHAIRPERSON REID: And they didn't send a

16 letter --

17 MR. MCCLAIN: We did not address -- we have a

18 letter.

19 MS. COOK: Do you have the ANC letter?

20 MS. KING: Yes, I do.

21 CHAIRPERSON REID: What does it say?

22 MS. KING: That they are duly --

23 CHAIRPERSON REID: What ANC is that?

24 MS. KING: 4C.

25 CHAIRPERSON REID: 4C.

26 MS. KING: ANC 4C. It is signed by the

1 chairperson, Willie Flowers. They met on the 13th -- Tuesday,
2 the 13th of July. There was a quorum. Public notice was
3 given. All 9 commissioners voted in favor of adopting the
4 application.

5 CHAIRPERSON REID: Did it specify the return?

6 MS. KING: It did not.

7 MS. COOK: We would, of course, be delighted
8 with 5 years.

9 CHAIRPERSON REID: Yes. You see, the thing
10 about it is our hands are kind of tied. Because once you go
11 to the ANC and you discuss -- well, you don't discuss anything
12 to the contrary, the assumption is that the renewal is going
13 to be predicated upon the previous order and it was for 5
14 years. So not unless we were convinced or persuaded to change
15 that, that probably will end up it.

16 MR. MCCLAIN: Mr. Hood, it would be
17 appropriate, one, for us to obviously be more timely. But the
18 time that we do this again, we would raise that. If that were
19 the singular thing that we were going to address differently,
20 we would point that out to them at that point. That we are
21 going to go in and ask for a straightforward renewal with the
22 change that we could possibly get an extension. And then we
23 would ask them to note whether or not they approve that in
24 their letter to you so that you would have evidence that we
25 had talked with them and had dealt with them above.

26 MR. HOOD: Right. That is the way to go.

1 MR. MCCLAIN: Okay.

2 CHAIRPERSON REID: To your knowledge, have you
3 had any complaints -- has there been any -- from the abutting
4 neighbors in regard to traffic, parking, noise in regard to
5 your program operation or your school operation?

6 MR. MCCLAIN: The letters in the packet include
7 our most immediate neighbor, and a neighbor who is most
8 directly impacted by any -- if there were any parking
9 problems, because they are right across the street from us. We
10 have one other neighbor that we abut with who was a
11 participant in earlier processes but at this point has no
12 complaint that I am aware of.

13 CHAIRPERSON REID: All right. Well, there is
14 no one here in opposition or in support. So do you have any
15 closing remarks?

16 MR. MCCLAIN: No. You have had a long day.

17 MS. COOK: Would you like to have a summary
18 order or bench decision?

19 MS. COOK: Bench decision.

20 CHAIRPERSON REID: Are you going to make the
21 motion?

22 MR. HOOD: Yes. I make the motion that we
23 approve Case No. 16473.

24 MS. KING: I second that motion.

25 MR. HOOD: And I will ask, Ms. King, that we
26 also put on the conditions, which I don't have in front of me.

1 MS. KING: We will duplicate the conditions in
2 the existing -- in the order that expired in 1996, with the
3 following -- with the sole exception, that the name of the
4 school is the Parkmont School and not the Somerset School.
5 The five-year provision will remain in.

6 MS. COOK: The conditions in 1996, there were
7 actually only three. That approval shall be for five years.
8 Three parking spaces shall be provided on site. And then the
9 conditions from the prior order shall remain in effect. And
10 that would pull in the ones from the earlier.

11 MS. KING: Okay. All right. Whatever. So I
12 guess I just ripped out the stuff from the original order.

13 MS. COOK: Just to clarify.

14 MS. KING: So let's be economical about it and
15 do the same thing. Say it is for five years, change the name
16 of the school, and incorporate the previous conditions.

17 CHAIRPERSON REID: Okay. All in favor?

18 ALL BOARD MEMBERS: Aye.

19 CHAIRPERSON REID: Opposed?

20 MS. PRUITT: Staff will record the vote as 3 to
21 0, motion made by Mr. Hood and seconded by Ms. King.

22 CHAIRPERSON REID: Thank you.

23 MR. MCCLAIN: Thank you very much for your
24 time.

25 CHAIRPERSON REID: You should have your order
26 in about two weeks.

1 MR. HART: Application No. 16478 of East
2 Friendship Baptist Church, pursuant to 11 DCMR 3108.1, for a
3 special exception under the provisions of Section 205 to
4 establish a child development center with 20 children ages 5
5 through 11 years and 4 staff persons on the first floor in an
6 R-2 District at premises 231 44th Street, N.E., Square 5136,
7 Lot 59. CHAIRPERSON REID: There is only
8 one person?
9 MS. JOHNSON: Someone else was here but he had
10 to leave.
11 CHAIRPERSON REID: Okay. All right.
12 MR. HART: Please raise your right hand to take
13 the oath.
14 (WITNESS IS SWORN.)
15 CHAIRPERSON REID: Please give your name and
16 address.
17 MS. JOHNSON: Alberta Johnson.
18 CHAIRPERSON REID: Ms. Johnson, there does not
19 appear to be any opposition to your case either. As such, if
20 you would like, we can expedite this. You can stand on your
21 record which you have submitted for the most part.
22 MS. KING: I am sorry, I don't think that the
23 record has hit the issues.
24 CHAIRPERSON REID: No, no, let me finish. Your
25 request is under 205 for a child development center. And what
26 you've got to do is just demonstrate that you comply with the

1 conditions or the stipulations under that section. Are you
2 familiar with that?

3 MS. JOHNSON: The stipulations under that
4 section?

5 CHAIRPERSON REID: 205. That is what you are
6 here for.

7 MS. JOHNSON: Yes.

8 CHAIRPERSON REID: Do you have that?

9 MS. JOHNSON: Do I have what? Okay.

10 MS. PRUITT: Do you have Section 205 from the
11 zoning regulations with you?

12 MS. JOHNSON: Yes.

13 CHAIRPERSON REID: That is what you have to
14 respond to. That is all. Basically go over that and we can
15 basically expedite your case.

16 MS. JOHNSON: Okay. It is a split level house
17 that the church purchased and we wanted a daycare center there
18 and they said that it had to be zoned because it wasn't zoned
19 for that. We wanted 20 children. We have a school across the
20 street from the church, so we wanted a before and after
21 daycare center in addition to having children from age 2 to 5
22 or 2 to 6.

23 CHAIRPERSON REID: What else do you have?

24 MS. JOHNSON: I sent the letter here stating
25 that we wanted 20 children and we wanted to open up from 6:00
26 to 6:00.

1 CHAIRPERSON REID: Okay. Will you give us a
2 copy or did you get a copy of Section 205. That is what you
3 are going to have to address here today. Let me show you.
4 MS. JOHNSON: I don't understand what you are
5 asking me.
6 CHAIRPERSON REID: All right. Have you seen
7 this before? Come forward. Have you seen this? This is what
8 your case is all about.
9 MS. JOHNSON: Yes.
10 CHAIRPERSON REID: Did you see this before?
11 MS. JOHNSON: The one I had was --
12 CHAIRPERSON REID: You have to give it to
13 staff.
14 MS. PRUITT: Madam Chair, I can help, please.
15 She has an application from DCRA for the C of O, which is what
16 precipitated her coming here. And she has our application,
17 which isn't actually signed. So I guess you filled out one
18 that you signed and you left it with us, which is in there.
19 MS. JOHNSON: Yes.
20 MS. PRUITT: So, no. It appears that she has
21 not looked at at all the regulations that she needs to
22 address.
23 CHAIRPERSON REID: Well, then let's do this.
24 MS. JOHNSON: What I was -- excuse me.
25 CHAIRPERSON REID: Let me finish, please. Then
26 the thing to do was I was assuming that you had

1 -- I was, I guess, taking the liberty to assume that you had
2 already completed your application and you had responded to
3 the Section 205, which is what you have to answer. Those are
4 the -- that is the section in the regulation that you have to
5 respond to. Okay? Now what we can do is to -- rather than to
6 continue your case, it is pretty straightforward. We can
7 allow you to sit over there and to respond to that section,
8 each of the different subsections under it -- under 205. And
9 then we can proceed with the next case and then take your next
10 case after.

11 MS. PRUITT: Madam Chair, may I make a
12 suggestion? Mr. Nyarku, the project manager, did try to
13 contact the applicant but was unable to. Maybe at this point,
14 he can sit down and talk with her and walk her through what
15 she needs to address so hopefully we can then --

16 CHAIRPERSON REID: You mean now?

17 MS. PRUITT: Correct.

18 CHAIRPERSON REID: Okay. All right.

19 MS. PRUITT: And then maybe we can -- that will
20 help --

21 CHAIRPERSON REID: When you come here -- and I
22 realize that there is sometimes for some reason or another
23 persons coming who are not prepared. I was hopeful that you
24 had -- although you didn't submit it, that you had it there
25 with you and that you could do it orally. Since you didn't,
26 don't worry about it. You can do it. Mr. Nyarku will you

1 assist you and we will continue through with another case and
2 if you are ready, we will take you after that.

3 MS. JOHNSON: Thank you.

4 CHAIRPERSON REID: All right. Next case,
5 please?

6 MR. HART: Okay. Application No. 16459 of
7 Marquette University pursuant to 11 DCMR 3108.1 for a special
8 exception under Subsection 206C for purposes of a private
9 school for 20 students and two staff persons in an R-4
10 District at premises 502 East Capital Street, N.E., Square
11 840, Lot 23. Would you please raise your right hand for the
12 oath?

13 (WITNESSES ARE SWORN.)

14 MS. KING: Mr. Simon, are you testifying? Were
15 you sworn in?

16 MR. SIMON: No, we weren't.

17 MS. KING: Why not?

18 MR. SIMON: Well, I was --

19 MS. KING: Anybody who -- Paul, we've got some
20 more people to be sworn in.

21 CHAIRPERSON REID: Mr. Pernell, are you
22 testifying?

23 MR. PERNELL: I have been sworn in.

24 CHAIRPERSON REID: For each case, sir.

25 UNIDENTIFIED SPEAKER: Madam Chair, an inquiry,
26 please. Two of us are here as neighbors and witnesses and

1 would like to request party status.

2 CHAIRPERSON REID: Let's swear in and then we

3 can do that. Are you Jean Marie Neal?

4 MS. GARRISON: No, I am not. I am Loretta

5 Garrison and this is Holmes Brown.

6 CHAIRPERSON REID: Okay. Let's do the swearing

7 in first.

8 MS. PRUITT: Because if you testify in whatever

9 status, you have to be sworn in.

10 MS. KING: Is Ms. Neal out in the hall?

11 MR. SIMON: Yes, I think so.

12 MS. KING: Well, would you go get her so we

13 don't have to do a third swearing?

14 MS. PRUITT: Can you wait a minute to make sure

15 we swear everyone in?

16 MR. HART: Is everyone here? Is everyone here

17 for Marquette University?

18 MR. SIMON: Yes.

19 MR. HART: Please raise your right hand to take

20 the oath.

21 (WITNESSES ARE SWORN.)

22 CHAIRPERSON REID: Okay. Now you requested

23 party status. I know a Jean Marie Neal, can you come forward?

24 And you, also, ma'am. Are those the only two requesting party

25 status?

26 MS. GARRISON: No, there are three of us.

1 CHAIRPERSON REID: All right. Come forward,
2 please. Are you two together?
3 MR. BROWN: No, we are neighbors.
4 CHAIRPERSON REID: Neighbors? And you are a
5 neighbor too?
6 MS. NEAL: Yes.
7 CHAIRPERSON REID: Okay. Is there any reason
8 why your concern can't be aired through your ANC?
9 MS. PRUITT: Basically, ma'am, you need to
10 prove to the Board that you are more affected and/or aggrieved
11 to a greater extent than the surrounding community and that
12 you don't have the same general concerns as your surrounding
13 community.
14 MS. GARRISON: If I may?
15 CHAIRPERSON REID: Sure.
16 MS. GARRISON: I live at number 843 --
17 MS. BAILEY: Name and address?
18 MS. GARRISON: Loretta G A R R I S O N. I
19 reside at 8 Fourth Street, S.E., which is adjacent to the
20 building that Marquette University has been using as its
21 dormitory for the past two or three years, and we have been
22 very directly and adversely impacted by the operation of the
23 unsupervised dormitory there because of the students and a
24 whole host of problems that have ensued.
25 CHAIRPERSON REID: Okay.
26 MS. GARRISON: And we did not receive notice of

1 this hearing because we are outside the radius of the address
2 at 502 East Capitol Street, N.E., which is where, I believe,
3 the educational offices of Marquette University are located,
4 and we only happened to notice the sign on Sunday night, which
5 is the only reason that we happen to be here today. So we had
6 very little notice of this.

7 CHAIRPERSON REID: Excuse me, ma'am. You are
8 adjacent to, but you are more than 200 feet --

9 MS. GARRISON: No, no, no. It is two different
10 buildings. The building where Marquette University -- the
11 applicant before you today concerns 502 East Capitol Street.
12 However, as a part of that operation and as a part of the
13 application to run a school, they are housing and have been
14 housing their students in a dormitory in a small apartment
15 building which is right next door to me.

16 MS. PRUITT: Madam Chair, while I understand
17 that is true and I am not disputing the fact, this particular
18 case only goes to the property at -- I am sorry, I just lost
19 the address.

20 MS. GARRISON: 502 East Capitol.

21 MS. PRUITT: 502 East Capitol.

22 MS. GARRISON: But the reason that we are here,
23 Madam Chair and members of the Board, is because the operation
24 of this school cannot be considered without the consideration
25 by the Board of the overall operation, which includes how and
26 where they are going to house the students that they are going

1 to have attending the school. And in fact, they have been
2 operating or using the building right next to me as the
3 dormitory for these students for the past two to three years.
4 So, that -- and clearly the way they run that goes directly to
5 the way they intend to operate their facility.

6 MS. PRUITT: Madam Chair, you might want to ask
7 the applicant. This dorm is in a residential neighborhood?

8 MS. GARRISON: Yes.

9 MR. COTTINGHAM: Well, if I may, it is not a
10 dormitory. It is an apartment building.

11 MS. PRUITT: Is it allowed by matter of right?

12 MR. COTTINGHAM: It is an apartment building
13 used for residential -- for students to reside. It is not the
14 building that is part of this application.

15 MS. KING: But it is part of your campus in
16 Washington?

17 MR. COTTINGHAM: No. We don't own it. We rent
18 space in it.

19 MS. NEAL: We beg to differ. If we could
20 present --

21 CHAIRPERSON REID: Your name?

22 MS. NEAL: I am sorry, I have never testified
23 before you before. So I apologize.

24 CHAIRPERSON REID: Name and address.

25 MS. NEAL: Jean Marie Neal. I live at 621 A
26 Street, N.E. I think there is a lot more to this application

1 -- a lot more is involved with Marquette than just the
2 application you have before you for 20 students.

3 MS. KING: But, we are not hearing your case
4 now. What we are deciding is party status.

5 MS. NEAL: I am just saying that if we could
6 present our information, I think you would see the tie in.

7 CHAIRPERSON REID: Okay. I think this is what
8 we have to do. Your relationship to this case is not germane
9 to what we are here for today. However --

10 MS. NEAL: I am here to give testimony on 502
11 East Capitol.

12 CHAIRPERSON REID: Let me finish.

13 MS. NEAL: No, there is a difference.

14 CHAIRPERSON REID: Let's get a clarification.
15 You are -- you did not receive notice.

16 MS. NEAL: That is correct.

17 CHAIRPERSON REID: You are not within 200 feet
18 of the school.

19 MS. NEAL: 502. But we are --

20 CHAIRPERSON REID: Okay. Now, the residence is
21 not a part of this case today. So --

22 MS. NEAL: Well, but I think our point, Madam
23 Chair, if I may, is that in fact wherever and however they
24 house the students for the school that they run is in fact
25 germane and the issue is the adverse impacts --

26 CHAIRPERSON REID: Would you let me finish?

1 Let me finish. Let me finish. Again, we have to follow
2 procedure. Okay? We have regulations that we have to follow.
3 And as such, because of the fact that this particular address
4 -- you are not within 200 feet of the address. Therefore,
5 while you will not be able to get party status, you will be
6 given the opportunity to testify in support or in opposition.
7 But you cannot receive party status. That is an altogether
8 different category. So, I think that the objective would be
9 achieved basically and you will be able to testify here today.
10 That is what you want to do?

11 MS. NEAL: Yes, ma'am.

12 CHAIRPERSON REID: Okay. The party status is
13 reserved for people or persons or parties or entities within
14 200 feet of or they are more aggrieved.

15 MS. NEAL: That is fine with me as long as I can
16 testify today.

17 CHAIRPERSON REID: Sure you can.

18 MS. GARRISON: Okay. But madam Chair, I
19 believe that our interest -- and Holmes Brown is also directly
20 adjacent to the building that is used as the dormitory. Our
21 particular interest is in fact the way they operate this
22 facility and the adverse impact on us and what we are
23 concerned about is if -- and the reason that we are requesting
24 party status is if in fact there is a decision to move forward
25 and to approve this school, we are extremely interested in
26 ensuring that there are certain conditions attached to this

1 which directly affect or directly impact the way they operate
2 the dormitory, wherever they happen to have that dormitory.

3 CHAIRPERSON REID: But it is not a dormitory.

4 MS. GARRISON: It is a dormitory.

5 MS. PRUITT: Excuse me, ma'am. But that is not
6 in our jurisdiction because that case is not before us. The
7 Board does not have the authority to impose --

8 MS. GARRISON: I understand that you are
9 drawing strict bright lines here, but in fact the two are
10 connected.

11 MS. PRUITT: It is not strict lines. I mean,
12 it is just -- we can only act on what is before us, ma'am.

13 MS. GARRISON: What we are trying to do is to
14 ensure that we have --

15 MR. HOOD: Madam Chair, I think we can resolve
16 this by her testifying. And her party status is just so that
17 they can ask the applicant questions.

18 CHAIRPERSON REID: But, Mr. Hood, our
19 procedures will not allow us to grant party status to someone
20 --

21 MR. HOOD: But you didn't let me finish.

22 CHAIRPERSON REID: I am sorry.

23 MR. HOOD: I was just going to say that I agree
24 with you. I don't think that she has to have party status. I
25 think she can get her point across just testifying.

26 CHAIRPERSON REID: That is what we said

1 earlier.

2 MR. HOOD: That is my point. I am saying we
3 are belaboring the point as we are going on and on.

4 CHAIRPERSON REID: But over and beyond that, Mr. Hood,
5 she is insisting on party status irrespective of the fact that
6 we just said that she can't be given party status.

7 MR. HOOD: If we take a vote --

8 MS. KING: And we are denying it.

9 MS. PRUITT: And you've denied it.

10 MR. HOOD: Oh, we have? Oh, I must have been -
11 - excuse me. I was out of the room.

12 CHAIRPERSON REID: We can't.

13 MS. KING: Party status is denied.

14 CHAIRPERSON REID: We cannot grant you party
15 status on a property that is not a matter of this particular
16 proceeding today.

17 MR. BROWN: How far does the 200 foot radius --

18 MS. PRUITT: 200 feet from the boundaries of
19 the property.

20 CHAIRPERSON REID: 200 feet from the subject
21 property. Is it 502?

22 MR. BROWN: I understand. But I am just
23 wondering who the last -- I didn't have a tape measure, so I
24 am just wondering who the last person notified was.

25 CHAIRPERSON REID: Circumference.

26 MR. BROWN: I am sorry. I --

1 MS. GARRISON: The specific address.

2 CHAIRPERSON REID: Your issue is with a
3 different building. And that building is not --

4 MR. BROWN: I am simply trying -- I was unaware
5 of the 200 foot notice, and I am just curious about if you
6 take 200 feet from the building in question, how far down
7 towards the Capitol on East Capitol Street did you get? 416?

8 MS. PRUITT: I would have to look in the large
9 file.

10 CHAIRPERSON REID: And also --

11 MR. BROWN: Okay. I heard the answer.

12 CHAIRPERSON REID: And also, any concern that
13 you have can be aired through your ANC representative as well.
14 So if you wanted to make sure that you are sure of the
15 conditions or whatever, then that has to be discussed with
16 your ANC, which is the body that we recognize as representing
17 that particular geographical area.

18 MR. HOOD: Madam Chair, for the record, I also
19 would like to be recorded as voting to deny her party status.
20 I wasn't in the room, so I just wanted to put that on the
21 record.

22 CHAIRPERSON REID: Oh, we didn't really vote.

23 MR. HOOD: Oh. I thought it was a vote.

24 CHAIRPERSON REID: We just did it by consensus.

25 MR. HOOD: Oh, okay.

26 CHAIRPERSON REID: And if you would like, we

1 can take a --

2 MR. HOOD: No, that is fine.

3 CHAIRPERSON REID: All right.

4 (Whereupon, at 6:00 p.m., the proceedings went
5 immediately into Evening Session.)

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10

1 E-V-E-N-I-N-G S-E-S-S-I-O-N

2 (6:00 p.m.)

3 MR. COTTINGHAM: I would like to start by
4 introducing who we are for the record. My name, for the
5 record, is Steve Cottingham, I am Assistant Vice President and
6 counsel for Marquette. I am an attorney for the University,
7 but I am also an administrator at the University and may
8 testify because I have been involved with this project back to
9 1995, when we acquired the building.

10 CHAIRPERSON REID: All right. Will you please
11 project your voice. And can counsel testify?

12 MS. PRUITT: We have had this problem before.

13 MR. COTTINGHAM: I won't say much.

14 MS. PRUITT: If he testifies, I would say we
15 would not take him as an expert witness. But he may testify.

16 MR. COTTINGHAM: It will be factual matters of
17 which I have factual knowledge.

18 MS. PRUITT: All right. And you were sworn in,
19 because generally counsels aren't. Thank you.

20 CHAIRPERSON REID: All right.

21 FATHER O'BRIEN: I am Father Timothy O'Brien.
22 I am the Director of the Marquette University Les Aspin Center
23 located at 502 East Capitol. I also reside at that facility.

24 MR. COTTINGHAM: If you'd like, we thought what
25 we would do is open with Father describing a little history of
26 the program and the proposed use of the premises.

1 FATHER O'BRIEN: Okay. I think what is really
2 important for you to understand is that what we are talking
3 about is the basement at 502 East Capitol, which is used
4 occasionally for seminars for students that we train in a
5 congressional internship program and with federal agencies. I
6 think part of the misperception is when we put the notice out
7 in front of our building for the special exception -- and I'll
8 get to how that came about in a minute -- it gave the
9 impression that we were going to move 20 students into my
10 residence -- into the building. The Board of Zoning
11 Adjustment sign suggests that we are switching our status in
12 some way. We are not switching our status at all. We will
13 continue to operate the way we always have. And we began in
14 good faith in securing a permit following the rules and
15 regulations of the District of Columbia under the rubric of a
16 private club, because it in no way is a full university. Our
17 students register in Milwaukee, where Marquette is located. I
18 submit grades to Milwaukee where the students are located.
19 This is just a tangential experiential learning program for a
20 semester or a summer. And it is not exclusive to Marquette.
21 We have got people in our neighborhood, one of whom has their
22 daughter at Boston College, that is interested in having their
23 young one study with us. Another neighbor has a son at Miami
24 of Ohio.

25 The whole issue of housing is a completely
26 separate issue from I think what we are here today for. And

1 the reason we are here today is because the Capitol Hill
2 Restoration Society had challenged our private club status.

3 MR. COTTINGHAM: If you could, why don't we go
4 back a little bit to 1995. I did submit a letter yesterday
5 that you should have in your packets that sort of details the
6 history of how we purchased this building and the conditions
7 under which we purchased it initially.

8 MS. PRUITT: It is in your supplemental
9 package?

10 FATHER O'BRIEN: But in Mr. Cottingham's letter
11 to you, he details exactly the chronology and the issuance of
12 certificates of occupancy. And as a Catholic university and a
13 value-centered educational institute, we did absolutely
14 everything to conform to the District of Columbia
15 requirements. And I give you that as my solemn word. We did
16 everything. We operated in good faith. We would not have
17 bought that building if we did not have the assurances from
18 the District of Columbia that we could operate for the
19 purposes that we are operating.

20 Now there have been rumors in the neighborhood
21 over time that we are misrepresenting and that we don't have
22 any concern for the District of Columbia. That is very
23 painful and it is just plain not accurate. Our students
24 volunteer in inner city schools. They work in Habitat for
25 Humanity. We do a great deal of good to help build up this
26 community. And to show our demonstration of good behavior to

1 the community, when the Capitol Hill Restoration Society
2 challenged whether or not the private club status was the
3 rubric that we should have gone in under, I believe -- and I
4 believe Mr. Schauer is here -- the challenge was that there
5 wasn't public notice given to the purchase of this property
6 for this particular use.

7 MR. COTTINGHAM: If I may just interject for a
8 second, the property is zoned R-4, and under that
9 classification, private club status is accorded as a matter of
10 right. And so, therefore, no public hearing was required. It
11 simply --

12 MS. PRUITT: Excuse me, sir. Could you speak
13 up? I think the audience is having a hard time hearing.

14 MR. COTTINGHAM: I am sorry. The building is
15 zoned R-4. Under that category, the private club status is
16 available as a matter of right, so no public hearing is
17 required. You simply obtain the building permits and then the
18 subsequent issues of occupancy following the inspected build-
19 up of the basement. That private club status continues, again
20 only with respect to the basement of the entire building. The
21 rest of it is strictly residential.

22 FATHER O'BRIEN: And then, if I might continue,
23 when the Capitol Hill Restoration Society challenged -- I
24 think that is the correct term -- our private club status
25 because of lack of notice to the community, we entered into an
26 agreement with the Capitol Hill Restoration Society after

1 enormous costs of legal bills to us, that we would cooperate
2 with the community in whatever way we could. That is what
3 brings us here today is a request for a special exception.
4 That was the agreement that was struck between Capitol Hill
5 Restoration Society and Marquette University. And I believe I
6 just saw the letter Mr. Schauer is going to show you where now
7 they withdraw that objection and support what we have
8 requested in terms of this special exception.

9 So I thought it would be all done today. That
10 we only had one party opposing us several years ago and that
11 we served the public notice. I went to the ANC meetings, the
12 ones that I was -- except for the 6B meeting, which was held
13 without my knowledge. I arrived on June 8 for their meeting
14 to find people coming out of the hall saying, Father, forget
15 it, they canceled the meeting. And then 6B, which is not the
16 ANC in which 502 East Capitol is located -- that is ANC-6A --
17 I went to their meeting and have gone to their meetings since
18 1998, and we have a unanimous decision from our ANC, the ANC
19 of jurisdiction of 502 East Capitol. And then I was shocked
20 when Mr. Gottlieb Simon told me on a phone conversation a)
21 that they had a meeting, and b) that they voted against us,
22 and c) that I didn't have a chance or Marquette University
23 have a chance to participate. I don't think you will find
24 many groups that are more neighborly conscious than we are.
25 And not to give us a chance to even express our view -- and
26 then if you noticed, even on that letter -- and that is what

1 got me suspicious of the veracity of some of the things that I
2 was told by the representative of ANC-6B, that Northeast is
3 even eliminated from the letter that is written to you, as if
4 to give the impression that ANC-6B has the jurisdiction. Now
5 I think an important question for you to resolve is how can
6 the ANC, where I go to to represent the university and
7 participate and share in whatever questions they have, how can
8 they vote unanimously, the ANC of jurisdiction, which you, as
9 I understand it, are to give great weight to their decision?
10 The adjacent ANC holds a meeting without our knowledge. We
11 are the party that they are going to make a determination of,
12 and I am not able to make any sort of presentation to them.
13 And I asked for the minutes of their meeting and they tell me
14 they are not available until September. I asked for a
15 resolution that was coming down to you, and well it will be in
16 the mail. And then I believe they filed their resolution this
17 Monday, July 19.

18 So I am asking you to expedite as rapidly as
19 you can this entirely long process that I think the
20 University, at enormous expense -- and I am in a little bit of
21 trouble with the University President because no one at the
22 University can understand how this possibly could happen. And
23 the more we prolong this, the more expense obviously it is
24 going to cost the University. We will see it to the end
25 because we believe we are absolutely right. We are good
26 neighbors and I can take the three of you up and down East

1 Capitol and introduce you to the neighbors who are absolutely
2 good friends, who welcome the students, the program, the
3 diversity that comes into that neighborhood. A few squeaky
4 wheels all of a sudden get so much attention that I think is
5 disproportionate to the case we have before you. That is all
6 I have to say. I will be happy to answer questions.

7 MR. COTTINGHAM: If I might before that just a
8 couple of things. I think you said them, but just to make
9 this clear. You are not proposing any change in the current
10 operation of the program if this special exception is granted,
11 correct?

12 FATHER O'BRIEN: Correct.

13 MS. KING: What are the hours during which this
14 club or school or whatever it is called operates?

15 FATHER O'BRIEN: During the semesters, we have
16 classes on Tuesday afternoons and Thursday afternoons. They
17 are seminar experiential learning. MS. KING:
18 What time?

19 FATHER O'BRIEN: They are in the offices 3.5
20 days a week. We have seminars --

21 MS. KING: Tuesday and Thursday afternoons what
22 hours?

23 FATHER O'BRIEN: 1:00 usually until 4:30.

24 MS. KING: And that is it?

25 FATHER O'BRIEN: That is it.

26 MS. KING: The rest of the --

1 FATHER O'BRIEN: That is in the basement now.
2 Visualize this building. I live in the building with my
3 excellent dog. And the basement is all that is used for the
4 seminars.
5 MS. KING: And it is just used for 3.5 hours
6 twice a week and the rest of the time it is vacant?
7 FATHER O'BRIEN: Nearly vacant.
8 MR. COTTINGHAM: You have a board of visitors.
9 MS. KING: What else is it used for?
10 FATHER O'BRIEN: We have a board of visitors
11 that comes for meetings once a quarter and we use it then. We
12 have on occasion a reception for the -- someone at the
13 university. Like the Dean of the School of Nursing had some
14 of her alumni people from the School of Nursing in the Greater
15 Washington area, about 14 or 15 people.
16 MR. COTTINGHAM: And your board of visitors, if
17 you might explain who those --
18 MS. KING: I am sorry, I can't hear you.
19 MR. COTTINGHAM: I am sorry. If you might
20 explain who those board of visitors are.
21 FATHER O'BRIEN: Well, the board of visitors
22 are comprised of about I think 20-some people of high
23 political notoriety -- Senators and several Congressmen, a
24 number of people who have helped contribute to the purchase of
25 the building and the activities of the University.
26 MR. COTTINGHAM: They are supporters of the

1 program essentially.

2 FATHER O'BRIEN: Right.

3 MR. COTTINGHAM: It is a support group to the

4 program.

5 CHAIRPERSON REID: Is that it?

6 FATHER O'BRIEN: If you have questions.

7 CHAIRPERSON REID: Do you have any questions?

8 All right, is there any cross examination? Okay.

9 MS. PRUITT: He is not the affected ANC.

10 MS. BAILEY: He is not the ANC.

11 CHAIRPERSON REID: I am sorry, I thought you

12 were with the ANC.

13 MR. SIMON: No. Advisory Neighborhood

14 Commission 6B.

15 MS. PRUITT: But you are not the affected ANC,

16 so you are not granted party status.

17 MR. SIMON: But given that we are on the

18 boundary lines, it is my understanding that old ANCs have

19 concurrent jurisdiction.

20 MS. PRUITT: No.

21 MR. SIMON: That is not correct?

22 MS. PRUITT: No. Sorry, Mr. Gottlieb, no. And

23 that is not how the Board has enforced that. I mean, we had

24 the same issue with Angola -- I mean, New Guinea. So it is

25 the affected ANC that is the automatic party.

26 MR. SIMON: We received a --

1 MS. PRUITT: Yes. That is a courtesy that our
2 office extends.

3 MR. SIMON: Well, let me clarify that.

4 MS. KING: You can testify but you can't cross
5 examine.

6 MR. SIMON: Well, I understand what you are
7 saying, but I did have some cross examination.

8 CHAIRPERSON REID: Where is the affected ANC?

9 MS. SCHMIDT: I am right here.

10 CHAIRPERSON REID: Okay. Then can you give her
11 your questions?

12 MR. SIMON: Yes, I can. But just for
13 clarification, is it my understanding that I needed to have
14 raised the question of party status for the ANC earlier in the
15 process?

16 CHAIRPERSON REID: Well, my understanding is
17 that only the affected ANC.

18 MS. PRUITT: Yes. If he is requesting party
19 status for his ANC, yes, he would have had to raise it
20 earlier. Because it is not an automatic. It is automatic for
21 the --

22 CHAIRPERSON REID: Well, why can't he raise it
23 now?

24 MS. PRUITT: Well, I mean it is a procedural
25 issue.

26 CHAIRPERSON REID: Yes, I have no problem with

1 it. I mean, if that is all he has to do and he didn't know he
2 was supposed to do that, I have no problem with it. Go ahead.
3 Unless there is an objection.

4 MR. HOOD: I am concerned of the precedent we
5 are setting here. I think very few of that whole ANC process
6 -- 6A and 6B -- one is in favor. But anyway, I think the most
7 affected -- the ANC that is most affected should be the one.
8 I believe that is how we previously have done it.

9 CHAIRPERSON REID: Yes. Unless -- Ms. Pruitt-
10 Williams said unless the other ANC asked for party status.

11 MS. KING: But Mr. Gottlieb says that the
12 boundaries of his ANC are directly across the street from
13 this. I mean, in fact, Capitol Street is, you know --
14 whichever Capitol Street it is, east, north or south, would
15 always be the boundary of an ANC. So that there would always
16 be one that has --

17 CHAIRPERSON REID: Okay. But let's not belabor
18 this if it is okay.

19 MR. HOOD: Yes. That is what I am saying.
20 Let's move forward.

21 CHAIRPERSON REID: All right. Go ahead.

22 MS. PRUITT: And just for the record -- so I put on the
23 record that you are granting party status to 6B.

24 CHAIRPERSON REID: Yes.

25 MR. COTTINGHAM: If I may, the precedent there
26 would be --

1 CHAIRPERSON REID: It is not a precedent. We
2 just didn't do it earlier. He didn't ask -- he didn't know to
3 ask.

4 MR. COTTINGHAM: Not so much on that question.
5 But then wouldn't that say that every time an ANC is adjacent
6 that you are going to give them party status?

7 MR. HOOD: This is a very unique situation, I
8 believe, Madam Chair. This normally -- from my experience --

9 CHAIRPERSON REID: This is right across the
10 street. So the idea of being affected is germane to both.

11 MR. COTTINGHAM: But whenever somebody is on
12 the -- I won't belabor the point. It has been a long day. But
13 --

14 CHAIRPERSON REID: If it is, then we will take
15 it up at that time.

16 MR. COTTINGHAM: Okay.

17 CHAIRPERSON REID: All right, Mr. Simon.

18 MR. SIMON: Thank you very much. Could you
19 please explain your understanding of what the parking
20 requirements are on this special exception?

21 MS. KING: There was no testimony on parking.

22 MR. SIMON: All right. But parking is a
23 requirement.

24 MS. KING: Cross examination goes to the
25 testimony that was provided.

26 MS. PRUITT: You can do that in your testimony,

1 Mr. Gottlieb.

2 MS. KING: You can do that in your testimony.

3 MR. SIMON: All right. I will limit myself

4 then to just a simpler point at this point. Father O'Brien,

5 is your name on the application as the person to be notified

6 with regard to this application?

7 FATHER O'BRIEN: I believe the University

8 representative's name would be on that.

9 MR. SIMON: Mr. Cottingham, is your name on the

10 application as the person to be notified?

11 MR. COTTINGHAM: I believe it is.

12 MR. SIMON: And were you ever notified by me

13 that there was an ANC-6B meeting and you were invited to come?

14 MR. COTTINGHAM: Of a June 15 meeting, no.

15 MR. SIMON: Mr. Cottingham, the question was

16 were you ever notified --

17 MS. KING: What was the answer to that

18 question, Mr. Cottingham? If you keep your hands in front of

19 your mouth and turn away, we can't hear you.

20 MR. COTTINGHAM: I am sorry.

21 MR. SIMON: Were you ever notified by me of an

22 ANC-6B meeting and invited to come or send a representative?

23 MR. COTTINGHAM: I don't recall.

24 MR. SIMON: If I were able to show you my long

25 distance telephone bill would that help you recall?

26 MR. COTTINGHAM: I know we obviously had notice

1 of the June 8 meeting because Father O'Brien showed up to
2 attend that meeting.

3 MR. SIMON: Father O'Brien, do you have an
4 assistant Richard Ficuda? I may be mispronouncing his name.

5 FATHER O'BRIEN: No.

6 MR. SIMON: Do you have someone that sounds
7 like that?

8 FATHER O'BRIEN: We have an assistant Tom
9 Ficuda.

10 MR. SIMON: Ficuda. I apologize.

11 FATHER O'BRIEN: Yes. Who you say you called
12 who said you never called. You told me that you left a voice
13 mail and you did not. So continue.

14 MR. SIMON: I will be happy to continue with
15 your forbearance. Did you say -- is it your testimony that
16 Mr. Ficuda told you that I never spoke to him?

17 FATHER O'BRIEN: No.

18 MR. SIMON: Did Mr. Ficuda ever tell you of our
19 several conversations?

20 FATHER O'BRIEN: I don't know what several
21 means. He told me he had talked to you.

22 MS. KING: Madam Chair, I don't recall any
23 testimony in direct testimony about Mr. Ficuda.

24 CHAIRPERSON REID: Mr. Simon, please keep your
25 questions germane to the testimony here today.

26 MR. SIMON: Yes. I was trying to relate to the

1 question of whether or not the University and Father O'Brien
2 had ever received any notification of the ANC-6B meetings,
3 whether or not he had ever had an opportunity to come and
4 whether he had been deprived of an opportunity to come.

5 CHAIRPERSON REID: All right. Go ahead.

6 MR. SIMON: Did Mr. Ficuda tell you that that
7 our May meeting had been postponed or our consideration of
8 this item had been postponed because of your unavailability?

9 FATHER O'BRIEN: Yes, we requested a
10 postponement.

11 MR. SIMON: All right. And did you understand
12 that when you came to the June 8 meeting that the meeting was
13 postponed -- that it had been postponed because of a death --
14 the murder of ANC Commissioner Dennis Golinger?

15 FATHER O'BRIEN: I understood later that was
16 the reason for the postponement. But if I might add, I called
17 your voice mail recording at 4:30 in the afternoon and the
18 meeting was still scheduled. There was no notification that it
19 had been canceled. I moved a number of other meetings aside so
20 I could attend your meeting, only to find out that it was
21 canceled. The point here is June 15, I was not notified and
22 Tom Ficuda was not called by you and there was no message on
23 the voice mail. We had no ghost of a notion that that meeting
24 took place. And if you can deny that, you are dancing with the
25 truth.

26 MR. SIMON: I am not able to say that you never

1 received any efforts by me or anybody from the ANC to tell you
2 about our June 15 meeting. Let me simply ask when did you
3 next have occasion to ask us when we would be considering the
4 matter? You came to a June 8 meeting and it was postponed.
5 When did you next have occasion to ask us when we would be
6 holding a meeting? Was it the next day? Was it later that
7 week?

8 FATHER O'BRIEN: I can't really recall.

9 MR. SIMON: Was it perhaps in July?

10 FATHER O'BRIEN: I can't recall.

11 MR. SIMON: Okay. Thank you.

12 CHAIRPERSON REID: Thank you very much, Mr.
13 Simon. Any other cross examination?

14 MS. SCHMIDT: Yes, I am Janet Schmidt. I
15 represent 6A. We had supported the application for Marquette
16 for the variance as you know.

17 MS. KING: I can't hear you.

18 CHAIRPERSON REID: They supported the
19 application.

20 MS. SCHMIDT: We supported the application.
21 But I do have some questions that I want to confirm with
22 Father O'Brien -- certain understandings that we arrived at
23 at the last 6A meeting. And I also would like to ask
24 questions. You raised the issue today that the basement is
25 the only part of the premises used. Is there a separate
26 entrance for the basement?

1 FATHER O'BRIEN: Yes.

2 MS. SCHMIDT: Thank you. You had mentioned
3 today that there are positive relationships with the neighbors
4 up and down East Capitol Street and support in the
5 neighborhood. I was contacted today or in the last couple of
6 days by neighbors who have questions about conduct of
7 students, and you have placed this in issue by mentioning that
8 the students go to work in the community. So I believe this is
9 relevant. Could you discuss if there have been any complaints
10 about students living in an apartment building on 4th and East
11 Capitol Street that have been directed to you?

12 CHAIRPERSON REID: Your question has to be
13 germane to what was testified to during --

14 MS. SCHMIDT: He testified that the students
15 are involved in the community and there was a positive view
16 towards --

17 CHAIRPERSON REID: It has to refer to --

18 MS. SCHMIDT: That is right, but these students
19 visit the building.

20 CHAIRPERSON REID: But you can't ask about that
21 residence. That is not a part -- that is not a dormitory of
22 this particular application.

23 UNIDENTIFIED SPEAKER: Madam Chair, the only --

24 MS. PRUITT: Excuse me, ma'am. You can't speak
25 from the audience. This is her opportunity to cross examine.
26 You will have that opportunity to do that.

1 MS. KING: There is still the opportunity for
2 testimony. This is cross examination on the basis of anything
3 that they have testified to. But you can enter -- anybody can
4 enter additional information into the record when they are
5 testifying. But cross examination is not a time to enter new
6 material into the record.

7 MS. SCHMIDT: Is this the only premises used by
8 Marquette University with respect to the operation of a Les
9 Aspin Center? The one at 502 East Capitol Street?

10 MR. COTTINGHAM: Isn't that going after the
11 same question?

12 CHAIRPERSON REID: With respect to the what?

13 MS. SCHMIDT: The operation of the Les Aspin
14 Center. The Les Aspin Center -- Marquette University.

15 CHAIRPERSON REID: Right.

16 MR. HARRISON: Is this the only premises used
17 to conduct classes and office operations?

18 FATHER O'BRIEN: Yes.

19 MS. SCHMIDT: And at the ANC meeting on July 7,
20 I asked you if all the students lived in the house, and I will
21 tell you as I have told everyone, I have hearing loss. Was
22 your answer to that question yes or no?

23 FATHER O'BRIEN: Do all of the students live in
24 the 502 East Capitol residence?

25 MS. SCHMIDT: Yes.

26 FATHER O'BRIEN: None of them do.

1 MS. SCHMIDT: No students live there. Who
2 resides in that building?

3 FATHER O'BRIEN: I do.

4 MS. SCHMIDT: Just yourself and the dog?

5 FATHER O'BRIEN: Yes.

6 MS. SCHMIDT: Do visitors come and stay in the
7 residential part of the house?

8 FATHER O'BRIEN: Rarely, but yes. My guests
9 do.

10 MS. SCHMIDT: Like, for example, a letter was
11 distributed to the ANC about visitors from Africa. Now will
12 they stay on the premises?

13 FATHER O'BRIEN: No.

14 MS. SCHMIDT: All right. All I want to do now
15 is just go through our understandings if that is possible.
16 Father O'Brien agreed to certain conditions that --

17 MS. PRUITT: Excuse me, ma'am. This is only
18 questions. That can be handled --

19 MS. KING: That is for your testimony.

20 MS. SCHMIDT: Okay.

21 MS. PRUITT: That can be handled in your
22 testimony, okay?

23 MS. SCHMIDT: All right. Do you maintain a
24 close relationship with the students and oversee their conduct
25 when they are on the premises and in the neighborhood?

26 FATHER O'BRIEN: I am the director and I am

1 their professor.

2 MS. SCHMIDT: That is the answer.

3 FATHER O'BRIEN: And I am a priest.

4 MS. SCHMIDT: Thank you very much.

5 CHAIRPERSON REID: Okay. Now thank you very

6 much. If you have nothing else -- no more questions from

7 Board members, we will move now to the Government reports and

8 ANC reports.

9 MR. COTTINGHAM: Do we have an opportunity here

10 to supplement?

11 CHAIRPERSON REID: You will have an opportunity

12 to come back and have closing remarks.

13 MS. KING: And also to cross examine any other

14 witness.

15 MS. PRUITT: Unless you want to add something

16 at this point.

17 MR. COTTINGHAM: Well, that is what I guess I

18 am asking you.

19 CHAIRPERSON REID: Go ahead.

20 MR. COTTINGHAM: Obviously traffic or parking

21 rather is going to come up, so we should address that.

22 FATHER O'BRIEN: Our students are not allowed

23 to have cars. That is an issue that I think several letters -

24 - when I examined the BZA file to see what neighbors were

25 saying, and I called several of the people who had written in

26 -- one was complaining about the Michigan license plates and

1 that we should build our school in Michigan. Well, Marquette
2 is not located in Michigan. It is Wisconsin. And another
3 lady was concerned about parking. We do not allow students to
4 have cars. So we take no parking spots. I park in the
5 garage, so I don't use a parking spot. The assistant that
6 works at the center, the staff person, parks behind me so I
7 can't get out of the garage when I want. So we use no parking
8 whatsoever.

9 CHAIRPERSON REID: But nonetheless, you under
10 the provisions of Section 206.3, you are supposed to provide
11 parking.

12 MS. KING: One parking space.

13 CHAIRPERSON REID: And you do.

14 FATHER O'BRIEN: Yes.

15 CHAIRPERSON REID: Okay. And the only other
16 thing is that in regard to adverse impact to your knowledge,
17 is the school located in such a way that it does not cause any
18 objectionable problems to the adjoining neighbors in regards
19 to traffic and number of students or otherwise?

20 FATHER O'BRIEN: Oh, absolutely not. Right
21 across from us is Jimmy T's, a restaurant. There is a bed and
22 breakfast two doors from us. There is a grocery store right
23 across the street from us. East Capitol is a main bus route.
24 There is lots of activity there. One of the reasons we wanted
25 to be there was to be in an urban setting because our
26 university is committed to urban life. We are in downtown

1 Milwaukee, and that is why we selected that place, as well as
2 the proximity to the Capitol for our students doing their
3 internships. So we enjoy the vibrancy of diversity and living
4 in an urban environment. And I hope others would feel the
5 same.

6 CHAIRPERSON REID: Okay. Well, thank you very
7 much. Now you can sit back and we will have the ANC come up.
8 We have already gotten their reports, right?

9 MS. KING: Not that I am aware of, no.

10 MS. SCHMIDT: I think you all know I am Janet
11 Schmidt. I am with 6A-05. I represent the interests of my
12 constituents living in the zone where the Les Aspin Center is
13 operated. As you know from our July 14 letter to the Board,
14 the 6A Commission supports the special exception requested by
15 Marquette, if an only if certain conditions which Father
16 O'Brien agreed to in the July 7 meeting of 6A.

17 And those conditions are that the University
18 limits the enrollment to 20 students in this program, which is
19 exactly what the special exception asks for. That the Les
20 Aspin students or the Marquette students attending the Les
21 Aspin Center as a condition of enrollment are not permitted to
22 bring their cars to Washington. In addition, that no
23 officials or individuals related to Marquette University will
24 assist any student in obtaining a zone 6 residential permit or
25 temporary visitor parking which would take up space. As you
26 may know, to get student parking in the District, you merely

1 need a letter from the school you are attending stating that
2 you are a full-time student and you need to pay a fee. So we
3 have asked and Father O'Brien agreed that they would not
4 assist students in obtaining such permits. We have also
5 requested and Father O'Brien at our meeting agreed to the
6 condition that the Les Aspin Center of Marquette University is
7 not used for functions other than official Marquette
8 University events. And we had some discussion about what that
9 would mean. The interpretation was that Marquette University
10 events are ones that the University does not obtain unrelated
11 business taxable income or income from. There is no rental.
12 We also asked that the premises, and Dr. Father O'Brien agreed
13 to this, surrounding the footprint of the building will not be
14 used for garden parties of either students or attendees. We
15 are aware, however, that Father O'Brien barbecues in the
16 backyard. We have no problem with that kind of incidental
17 use. Please note in our letter there is a typo. We said the
18 grounds surrounding the premises will not exceed 20 students,
19 but we ask that they not be used for Marquette functions other
20 than incidental ingress and egress to the property, which
21 obviously would be necessary for any kind of function.

22 Since we took this position, I have had calls
23 complaining about students residing at an apartment at 4th and
24 East Capitol. I have no knowledge of this myself. But I
25 would ask Father O'Brien, and I tried to get to this in cross
26 examination, that if in fact that is the case, that he would

1 take great effort to try and control the situation if such a
2 situation does in fact exist. Because he has stated at prior
3 ANC meetings that he is closely involved with this students,
4 and I would ask as a graduate of the University of Wisconsin
5 who lived in a sorority house that perhaps such rules as house
6 rules might be enforced and that he would take that to heart
7 and take into account any concerns of the neighbors. And I
8 would think that he would be more than willing to abide by
9 that or try to assist or allay any concerns of the neighbors.

10 CHAIRPERSON REID: He is shaking his head.

11 Okay. Thank you. Mr. Simon?

12 MR. SIMON: Thank you very much. As you know
13 from the July 14, 1999 letter from Chairperson Walden, ANC-6B
14 voted 8 to 0 to oppose this application. This is an
15 application for a special exception in a residential zone. I
16 would have asked the Marquette representatives a moment ago if
17 I had been able to do, why this was a special exception that
18 they were requesting. I heard no testimony to indicate that
19 this was special -- that there was a problem or that there was
20 an issue or that there was something that required them to
21 have special. I heard what I refer to as a 4C exception.
22 This exception is comfortable. It is convenient for the
23 University. But it is corrupting and it is corrosive. It is
24 corrosive of the residential neighborhood and it is corrupting
25 of the zoning code. It is not in any way that has been
26 demonstrated here today something special. And the Commission

1 -- excuse me, the Board is not required to grant a special
2 exception simply because it facilitates or helps a program.
3 This is not the only location that this program can be at.
4 Mr. Scanlan, who was here earlier, received some assistance
5 from the Board a few months ago for a building on 8th Street
6 across from Eastern Market. It is going to have offices
7 there. That would be fine. I am familiar also with Waterside
8 Mall. It sits right on top of the subway station. They have
9 plenty of space. I don't know if Marquette University has
10 asked them about it. Link and Learn is sitting right up in
11 the top of that. That is an educational activity.

12 The point is without my trying to inventory all
13 the alternate spots in the city is that there was absolutely
14 no case made here today why this location -- this residential
15 location -- other than the convenience and the comfort to the
16 applicant, requires a special exception to the residential
17 zone in which it was located. This was not a surprise when
18 Marquette took over this location. This was an R-4 then. It
19 is still an R-4 now. There are many opportunities in the city
20 to put a school, if that is in fact what we are talking about
21 here. And I mention it that way just to -- for Mr. Hood's
22 benefit. I raised a question as a preliminary matter as to
23 whether 206, the school exception, was the correct one, or
24 210, the university and college exception was the special one.
25 We have gone forward today at the Board's request, and so we
26 are talking within that context. But we still raise an

1 objection with regard to which section it is in.

2 CHAIRPERSON REID: Mr. Simon, you said that you
3 did submit a letter. I don't have it. I have the 6A letter.
4 I don't have your -- the 6B letter. I don't have that.

5 MR. SIMON: I have another copy. I saw that --

6 MS. KING: Here it is.

7 MR. SIMON: Ms. King has a copy of that. Does
8 anyone else need a copy?

9 MR. COTTINGHAM: This is the one that --

10 MR. SIMON: Yes, that is the copy -- that is
11 the letter. Just by way of some other background, there was
12 an allusion made before about the fact that this was a club.
13 In our letter it talks about the Commission is concerned about
14 the loss of residential housing on a residential street in a
15 residential neighborhood. Marquette originally applied to do
16 this as a club. It is my understanding that the reason that
17 that use or that particular mechanism didn't go forward wasn't
18 simply that there was a question of notice. Father O'Brien
19 didn't get into the question of whether or not that use in
20 fact met the statutory requirements of avocational use versus
21 vocational use. And that is, I think, detailed in the hearing
22 on the appeal that you have available to you. So I won't go
23 into that now. But it was more than simply a question of
24 whether or not there was a notice requirement. It is whether
25 or not they really met the requirements.

26 The Commission is concerned that a school use

1 located in the basement may not always stay in the basement.
2 That there will be an irresistible attraction to using the
3 rest of the facility. And after all, who is going to be there
4 to monitor whether or not something happens on the first floor
5 or the second floor or whatever.

6 There are other locations. There are other
7 places where this educational activity can go on. No case is
8 made why it needs to be there except that it is convenient or
9 it is comfortable. But it is corrupting and it is corrosive.
10 We want to maintain and protect residential housing stock.
11 Simply no case has been made not to keep it residential.

12 On the notice requirements for today, some of
13 us had notice, but other people didn't. And that was the
14 issue that we wanted to present. I just mention that again so
15 that it is part of our testimony. Thank you very much for
16 your attention.

17 CHAIRPERSON REID: Thank you very much. Do you
18 have any cross examination of these two witnesses?

19 MR. COTTINGHAM: I do of Mr. Simon. A couple
20 of things. I understand that there were exceptional
21 circumstances that caused you to cancel your June 8 meeting.
22 Have you given the Board or us any written notice of the
23 rescheduled June -- have you submitted as evidence any written
24 document notifying people of the rescheduled meeting?

25 MR. SIMON: I have not.

26 MR. COTTINGHAM: How did you notify people of

1 the rescheduled meeting?

2 MR. SIMON: People were notified by phone calls
3 for all those people that we were expecting to be there. And
4 it was my belief that a phone call was made to Marquette.
5 Apparently it was not received. We also put the information
6 out on an e-mail list, and it is my belief -- but I don't know
7 for a certainty on this particular case -- but it is my belief
8 that in addition to that, we put two notices on lamp posts in
9 every single member district.

10 MR. COTTINGHAM: But you acknowledge that 502
11 East Capitol would not be in one of those districts?

12 MR. SIMON: Absolutely.

13 MR. COTTINGHAM: Okay. You talked about the
14 residential nature of --

15 MR. SIMON: Of East Capitol Street, that is
16 correct.

17 MR. COTTINGHAM: You are familiar with that
18 area?

19 MR. SIMON: Yes.

20 MR. COTTINGHAM: You are familiar with the 400
21 and 500 blocks of East Capitol, of which 502 East Capitol is
22 part of.

23 MR. SIMON: Right.

24 MR. COTTINGHAM: Are you familiar with two
25 grocery stores in those blocks?

26 MR. SIMON: I am familiar with the Congress

1 Deli. I am not sure I am familiar with the other one.

2 MR. SIMON: Are you familiar that there is a

3 laundry in those blocks?

4 MR. SIMON: Yes.

5 MR. COTTINGHAM: A chiropractic center?

6 MR. SIMON: I am not familiar with the

7 chiropractic center.

8 MR. COTTINGHAM: The Irish National Caucus,

9 which is in your district?

10 MR. SIMON: The Irish National Caucus is on the

11 400 block of East Capitol on the south side.

12 MR. COTTINGHAM: The Society of Women

13 Geographic -- Geography --

14 MS. KING: Geographers.

15 MR. COTTINGHAM: I said the 400 and 500 block

16 of East Capitol.

17 MR. SIMON: If your point that there are other

18 or some non-residential uses on the block, I will stipulate

19 that that is true.

20 MR. COTTINGHAM: So you would stipulate to the

21 pediatric center, the restaurant, the two bed and breakfasts

22 all in those two blocks?

23 MR. SIMON: I am stipulating that there are

24 other non-residential uses.

25 MR. COTTINGHAM: Okay.

26 MR. SIMON: And that the special exception use

1 -- and I am not sure which of those uses, by the way, were
2 grandfathered in or existing before and whether or not any of
3 them have had to come forward.

4 MR. COTTINGHAM: I am not asking you that. I am
5 simply --

6 MR. SIMON: I understand.

7 MR. COTTINGHAM: I am asking you about your
8 testimony about the overwhelming residential nature of that
9 neighborhood or street.

10 MR. SIMON: Well, my testimony was that it was
11 a residential zone. That is correct.

12 MR. COTTINGHAM: Just one more question. You
13 talked a little bit about the certificate of occupancy as a
14 private club. Are you aware that in fact that certificate of
15 occupancy is still in effect?

16 MR. SIMON: I am aware that -- yes, I am.

17 MR. COTTINGHAM: Did you today receive a copy
18 of a letter that I submitted to the Chair detailing the
19 history of obtaining that certificate?

20 MR. SIMON: I am aware of a lot about the
21 history --

22 MR. COTTINGHAM: Did you receive a copy of the
23 letter that I gave to the chair?

24 MR. SIMON: Yes, I did.

25 MR. COTTINGHAM: Thank you. So you saw in that
26 letter that that certificate -- the occupancy certificate was

1 granted in 1996.

2 MR. SIMON: I believe that that is what the
3 letter says.

4 MR. COTTINGHAM: And before today and before
5 your June 15 meeting, has ANC-6B filed anything with the Board
6 of Zoning Adjustment or any other government authority
7 complaining about the presence of 502 East Capitol?

8 MR. SIMON: We complained about the granting of
9 the certificate of occupancy.

10 MR. COTTINGHAM: Have you filed anything? Has
11 your organization filed any --

12 MR. SIMON: If you will give me a second just
13 to check my file. Well, let's see, on January 27, 1997, we
14 filed a resolution with regard to the certificate of occupancy
15 for the Les Aspin Center for Government and that was filed
16 with the BZA on January 27. And the state stamp says it was
17 204.

18 MR. COTTINGHAM: Thank you. That is all.

19 CHAIRPERSON REID: All right. Thank you.

20 MS. SCHMIDT: May I have an opportunity to
21 comment in light of what 6B has testified to?

22 CHAIRPERSON REID: Not usually. But can you
23 state a good reason?

24 MS. SCHMIDT: I just think that maybe I can
25 allay some of their concerns here. I think 6B is concerned
26 about -- and I hope I am not speaking out of turn here -- but

1 --

2 CHAIRPERSON REID: You speak to us.

3 MS. SCHMIDT: I think 6B is concerned with
4 respect to properties starting to look commercial, and I would
5 assume Father O'Brien -- as they have not put up commercial
6 signs saying Les Aspin Center at this time, that they probably
7 do not put signs up on the property in the future.

8 FATHER O'BRIEN: Right. And it is my
9 residence. It is residential.

10 MS. SCHMIDT: Yes. And that is something that
11 6A took into consideration, is that it does lend -- unless
12 somebody told you it was the Les Aspin Center, you probably
13 would not know. I had a couple of other calls which I am sure
14 are no brainers to agree to. Some people were concerned that
15 parties would exceed fire code limits. I would assume that you
16 would agree not to have parties that exceed fire code limits
17 in the house. And there was some concern about tour buses
18 parked, but you had assured us at the 6A meeting that we would
19 not have a problem with tour buses being parked on East
20 Capitol Street as that is a violation of the law anyway. So I
21 would think you would have no problem agreeing to that, which
22 would allay some of the concerns of citizens.

23 And I finally wanted to comment on something
24 that you said here. When we considered this at 6A, I was
25 aware that there would probably be some other incidental use
26 other than the basement. Father O'Brien lives in the house.

1 Students convene in the kitchen and have breakfast together.
2 I didn't feel that was a major impact and I don't think the
3 other commissioners did either. And we also felt that
4 supporting the certificate of occupancy would actually give 6A
5 an opportunity to limit the impact of the Les Aspin Center on
6 the residential neighborhood. Because with the present
7 certificate of occupancy being private club status, we were
8 not able to limit the growth of it in any way. And here these
9 variance is for 20 students, and we support that because it
10 will limit the impact on the neighborhood and they can only
11 have the certificate of occupancy if it doesn't exceed 20
12 students. They would have to come and revisit us if they
13 wanted to grow. So we felt there were actually better
14 safeguards by supporting this than there would be by opposing
15 it. Thank you.

16 CHAIRPERSON REID: Thank you.

17 MR. SIMON: Madam Chair, just one quick follow-
18 up. And that is with regard to what the ANC-6B's concerns
19 were, in the letter that you received, you will see that the
20 Commission wishes to protect and preserve the residential
21 character and actual residential use. So it isn't simply a
22 matter of appearance that 6B is speaking to. It is a matter
23 of whether or not buildings are used and available for
24 residential use, not simply how the outside facade.

25 CHAIRPERSON REID: Thank you.

26 MR. HOOD: Mr. Gottlieb, in an R-4 zone, it can

1 be permitted upon the Board's approval. I guess you are aware
2 of that. So it is not that it is prohibited. It can be
3 permitted.

4 MR. SIMON: No, no. Exactly. It is permitted
5 where it doesn't have any of the negative influences or
6 impacts upon the neighborhood that are listed. The traffic
7 won't be a problem or the parking won't be a problem or that
8 the number of students won't be a problem. And any other use
9 such as whether or not the facility becomes used for
10 entertainment or whatever might be going on. But that is a
11 special exception granted. And I am assuming -- my
12 understanding and maybe I don't have a good enough
13 understanding -- is it is not there to be used willy nilly.
14 It is to provide the Board with some discretion. With the
15 ability to shoot -- with the ability to cut the rough edges
16 off of the zoning when they don't fit quite right. But this
17 isn't one of those strange, unique, bizarre, difficult,
18 special situations. It is just an ordinary situation. And
19 the problem is how much Swiss cheese does the zoning code come
20 to be. When every person says, well gee, it would be nice if
21 I could use my basement for some other purpose other than a
22 residence. And if the city were hard-pressed to find office
23 or educational uses someplace else, we would have to look at
24 that. But we have a city where there are lots of spaces.
25 Spaces that are convenient to federal agencies, spaces that
26 are convenient to the Metro.

1 MR. HOOD: Okay.

2 MR. SIMON: That is the point.

3 MR. HOOD: All right. Thank you.

4 CHAIRPERSON REID: Okay.

5 MR. COTTINGHAM: May I follow up on that point?

6 CHAIRPERSON REID: I am sorry?

7 MR. COTTINGHAM: May I follow up on that last

8 point just for one second?

9 CHAIRPERSON REID: Comment or cross?

10 MR. COTTINGHAM: Cross.

11 CHAIRPERSON REID: Okay. Very quickly, please.

12 MR. COTTINGHAM: We had a earlier conversation

13 today about whether it should be under 206 or 210. So you

14 acknowledge that both of those sections at least contemplate

15 the possibility of schools and universities being in

16 residentially zoned neighborhoods. So it is not --

17 MR. SIMON: Yes. A special exception for both

18 schools and for universities and colleges.

19 MR. COTTINGHAM: Right. So the code

20 contemplates that that is permissible under the right

21 circumstances.

22 MR. SIMON: The argument isn't whether it is

23 possible. It is whether or not it is necessary.

24 CHAIRPERSON REID: Okay. All right, thank you.

25 Now persons and parties in --

26 MS. PRUITT: Excuse me, Madam Chair. For the

1 record, we have a letter from councilman member Ambrose, I
2 believe.

3 CHAIRPERSON REID: Well, I haven't gotten to
4 that yet.

5 MS. PRUITT: Oh. I thought you were doing
6 government reports.

7 CHAIRPERSON REID: No, I did government reports
8 earlier. But that was not in my opinion a government report.
9 That was a letter in opposition.

10 MS. PRUITT: Okay.

11 CHAIRPERSON REID: All right. Persons and
12 parties in support of the application -- in support -- persons
13 or parties in support of the application.

14 MS. KING: Other than the ANC.

15 CHAIRPERSON REID: Then when we get to the
16 persons and parties in opposition, someone can read Council
17 Member Ambrose's letter or just give the salient points of it.
18 Okay, Mr. Schauer?

19 MR. SCHAUER: Madam Chairperson and members of
20 the Board, my name is Lyle S C H A U E R. I reside at 1107
21 Independence Avenue, S.E. I am the zoning chair of the Capitol
22 Hill Restoration Society, and our offices are at 420 10th
23 Street, S.E. I have a written report in the form of a letter
24 which I would like to present to you. And if I might, Madam
25 Chairperson, I would just like to summarize it. Many of the
26 facts that are in this, even these short two pages, have

1 already been introduced. Mr. Cottingham's letter gives some
2 of the factual background. I don't intend to go over that
3 except to mention that in February of 1997, the Society
4 appealed -- that is, the Restoration Society -- appealed a
5 decision of the zoning administrator to issue a private club C
6 of O for the basement at 502 East Capitol. We objected to
7 that really on two grounds. One, we felt that the matter of
8 right non-residential uses in R-4 zones should be strictly
9 interpreted. And when we looked at the definition of the
10 private club, we found that it was restricted to avocational
11 activities only. And we objected strongly to the fact that it
12 was being used in our view for vocational activities. As a
13 result, we filed the appeal from the zoning administrator's
14 decision because we felt she had misinterpreted the
15 definition.

16 But our second point was that we wanted a
17 public process. And the granting of a matter of right use as
18 a private club does not involve a public process. There is no
19 notice given to anyone. The zoning administrator, if she feels
20 the matter meets the test of the definition, grants the C of
21 O, and no notice is given to anyone.

22 Before the case came to hearing before this
23 Board, Marquette and our Society reached an agreement that
24 they would apply for a special exception as a private school,
25 and that is the matter that is now before the Board. If an
26 order for a special exception is granted as a private school

1 with conditions that are acceptable to Marquette and the
2 neighbors, Marquette under the agreement will then apply for a
3 C of O for a private school and ask that the present C of O as
4 a private club be rescinded. If, however, you decide not to
5 grant the special exception or that it would be subject to
6 conditions that are unacceptable to Marquette, then the say of
7 the appeal that we and Marquette had agreed to would be lifted
8 and the appeal would continue. Now I don't mean that as a
9 threat to the Board to bring this revived appeal back to you.
10 But that is the situation where it stands. The agreement
11 provides that the Society will not propose in its own right
12 any conditions to be placed on the final order, nor will it
13 support any conditions that neighbors, other community groups
14 or the ANCs may propose. On the other hand, the Society is
15 not required to oppose any conditions proposed by others.

16 Could I just say a few words of my own on this
17 case beyond this statement? I am reminded of the blind men
18 and the elephant. You all know the story of the blind men and
19 the elephant. Depending on which part of the elephant a blind
20 man fetched up on, he declared it was either a wall or a rope
21 or a snake or whatever. And I really think that we can't look
22 at just this one house in this case. I think there are
23 community issues here. And I think this is something that we
24 have to work out. I would hate to be in your position because
25 it is a no win situation for you. You cannot meet the needs
26 of the neighbors and of Marquette at the same time. So if it

1 is at all possible, we want to try to work out an arrangement
2 so that Marquette can live there. After all, they established
3 themselves as a result of a decision by the City
4 Administrator, the Zoning Administrator, and in good faith
5 they entered into that house. We don't really feel
6 comfortable with trying to remove them. But we would like to
7 see a better arrangement worked out so we aren't stuck with
8 these narrow little legalities of what they do somewhere else
9 isn't germane to this case. It may not in fact be germane,
10 but it is very important to the community. So we've got to
11 work these things out. Best do it among ourselves, I think.
12 And I don't give up hope of doing that. I am sorry, I
13 shouldn't have gone on. But I really feel that is the
14 situation that we find ourselves in.

15 CHAIRPERSON REID: So, Mr. Schauer, basically
16 you would like to see some type of meeting of the minds with
17 the ANC and the neighborhood and Marquette, whereby there is a
18 special exception granted and that there are conditions --
19 mitigating conditions that the community can live with and at
20 the same time allow Marquette to be able to operate? That is
21 the objective?

22 MR. SCHAUER: That is the first step. But I
23 think we as a community have to take the next step, and that
24 is to try to work something out. Because tempers are getting
25 a little high. It is not good for our community. I mean a
26 little bit of that is fine. It keeps the juices flowing. But

1 this is getting a little bit out of hand.

2 CHAIRPERSON REID: Well, I think that this is
3 not unlike what is typically the case when we have
4 applications before us that have some opposition and tempers
5 start to flare nonetheless. But when people kind of get a grip
6 on the emotions and start looking at how they can work
7 together to live together and work out compromises, then
8 usually typically we have seen that things work out most
9 positively in the end. And I think that I am -- I don't know
10 yet until we hear the opposition, but I am hearing some give
11 and take on both parts. I have not -- Marquette seems to be
12 very amenable to trying to work out what is being asked as far
13 as conditions are concerned and I am hearing some give and
14 take on the community. So we will see. But hopefully we will
15 get some resolution, some positive resolution, particularly
16 with the inclusion of the conditions to mitigate the negative
17 impact, if there is any negative impact or to ensure that
18 there would not be any negative impact.

19 MR. SCHAUER: Thank you, Madam Chairperson. I
20 certainly hope that happens.

21 CHAIRPERSON REID: Thank you. Did you wish to
22 cross examine?

23 MR. COTTINGHAM: Actually just following up on
24 that topic with one question for Mr. Schauer, who I finally
25 get to meet after talking to about four years on the phone.
26 You mentioned a settlement agreement.

1 MR. SCHAUER: Yes.

2 MR. COTTINGHAM: And one condition in that
3 agreement. There is a declaration of restricted covenant.
4 Could you describe -- if this special exception -- it is
5 contingent -- Marquette will sign that if the special
6 exception -- you talked about if the special exception is
7 approved with appropriate conditions that were acceptable,
8 then we will sign this covenant. If you could just describe
9 that to the Board?

10 MR. SCHAUER: I would be glad to. I had hoped,
11 Steve, that you would cover that in your presentation and I
12 wouldn't have to get into this legal stuff. But if the
13 settlement agreement is carried out, that is, a special
14 exception is granted and Marquette gets its new C of O and
15 asks the zoning administrator to revoke the old one, then
16 Marquette further agreed to place a covenant on the property
17 at 502 that prevents them from buying any other property for
18 the next 10 years on Capitol Hill. Basically that is what it
19 provides.

20 CHAIRPERSON REID: They agreed to that?

21 MR. SCHAUER: Yes. And they will execute this
22 once those conditions are complied with, that is, that they
23 get their C of O for a private school.

24 CHAIRPERSON REID: Okay.

25 MR. COTTINGHAM: And we have provided a copy of
26 that to 6A. I assume, Lyle, you would have no objection if we

1 also provide a copy to the Board.

2 MR. SCHAUER: Not at all. I assumed it would
3 be provided to the Board.

4 CHAIRPERSON REID: For the record, it would be
5 great to have it. We don't know anything about that.

6 MS. SCHMIDT: 6A did not have a copy of that
7 either.

8 CHAIRPERSON REID: 6A and 6B as well. ANC 6A
9 and 6B, you should provide them with copies. Okay, are you
10 done, Mr. Schauer?

11 MR. SCHAUER: I am done if there are no more
12 questions.

13 MS. KING: No more questions. Nice to see you.
14 Thank you for waiting so late.

15 CHAIRPERSON REID: Those parties in opposition
16 please come forward -- persons in opposition please come
17 forward. Okay. And I would ask that given the lateness of
18 the hour that you try to contain your testimonies to no more
19 than 3 minutes and not be redundant. If one person has
20 already aired your particular issue, that should not be
21 repeated unless you continue your testimony without being
22 redundant. All right. Who wants to go first?

23 MS. NEAL: I will be glad to. I am Jean Marie
24 Neal. I live at 621 A Street, N.E., which is two blocks from
25 the location of 502 East Capitol. I thank you very much for
26 allowing me to testify. As I said earlier, this is my first

1 time testifying. I am a 20-year resident of Capitol Hill. My
2 husband and I very much care about the community. We are very
3 involved. I was just appointed by Council Member Ambrose to be
4 her delegate representative on the Eastern Market Citizens
5 Advisory Committee, and I can't say I am looking forward to
6 it.

7 MS. KING: It will be worse than everything
8 wicked you've ever done in your life.

9 MS. NEAL: I know. I just attended my first
10 meeting. But I think as residents and as citizens, we have to
11 do that. And we believe very, very strongly in that. I am
12 here today because I do care about the community. Real estate
13 in Capitol Hill, as in other areas of the District is booming.
14 That is good. We love it. But one of the negatives that
15 happens is that Capitol Hill is being threatened by lobbying
16 firms, various non-profit groups, and in this case a
17 university, who try to buy or do buy residential homes and
18 turn them into businesses.

19 I consider myself a pro-business Democrat, and
20 I want a thriving business environment. But everything, as Mr.
21 Gottlieb said, has its place. There is a lot of commercially
22 zoned rental and purchase property in the District and on
23 Capitol Hill. There is no need for business intrusion on what
24 is now residential. I have to tell you, I am tired of those
25 who use our community for their own purposes without regard to
26 the fact that we are a community, just like any other

1 community in this country. You know, we don't have voting
2 rights in the District, but we still can try to hold onto some
3 rights as homeowners. And for some reason, people seem to
4 treat the District of Columbia differently in everything that
5 is done.

6 I think the next decade is going to be a period
7 of rebirth for the city, I hope. And I think as members of
8 this Board, you are going to have tremendous, tremendous
9 responsibility and power to help shape that rebirth. The
10 decisions you make on matters like the one before you today
11 will literally determine the day-to-day living environment of
12 those of us who live here. I don't go back to Milwaukee as
13 this attorney does. I live on Capitol Hill. I have no other
14 home and no other place to go, and I have for 20 years.

15 I strongly oppose the granting of this special
16 exception to the Les Aspin Center. And I am actually in a way
17 -- this is very difficult because of Father O'Brien and they
18 are a wonderful school, et cetera. But the picture you have
19 been painted today is just not very accurate, and I am very
20 sorry to have to say that. There are a couple of commercial
21 properties in the 500 block of East Capitol. They described
22 to you the 400 block. If you look coming up from the Capitol
23 down East Capitol, 200 has gotten very commercial. 300 has
24 gotten commercial. 400 is pretty commercial, but almost all
25 of that has been there a long time. The 500 block we have
26 managed to keep residential. Jimmy T's restaurant has been

1 there a long time and it is a great place. There is a bed and
2 breakfast. I am not quite sure how that happened. But we
3 can't undo the mistakes of the past. But I hope we can surely
4 prevail on you to prevent more mistakes, more intrusion today
5 and in the future. We are not here to debate a dry cleaner or
6 a grocery store in the 400 block. That is not why we are here.

7 If we take the 500 block, then the 600 block is
8 next, and so forth and so forth. Capitol Hill is very
9 convenient. Mr. Gottlieb got that perfect. It is comfortable
10 and it is convenient and it is an easy target for commercial
11 ventures, and that is what is happening. This is far, far
12 broader in our community than this one house. If they are
13 allowed to continue to operate, it is going to send a strong
14 message that is heard across on Capitol Hill. And it is going
15 to have a very chilling, negative effect on residential real
16 estate. So if you care about residential real estate, that is
17 all this decision is about. That is the whole issue.

18 CHAIRPERSON REID: You have one minute.

19 MS. NEAL: All right. Can I ask you for more
20 time? I am here on behalf of a lot of people. I stayed up
21 until midnight working on this last night. Is it --

22 CHAIRPERSON REID: Well, the fact of the matter
23 is --

24 MS. NEAL: Is it too much to ask to hear from a
25 resident?

26 CHAIRPERSON REID: The fact of the matter is

1 that in your --

2 MS. NEAL: I have some important information.

3 CHAIRPERSON REID: In your preface, you went

4 into some other kinds of issues. And what you need to do is

5 specifically stay on point.

6 MS. NEAL: I will try to do that.

7 CHAIRPERSON REID: And what is germane to this

8 particular case.

9 MS. NEAL: I will try to do that. But I hate to

10 go back to my neighborhood today and say, I was cut short

11 because you couldn't hear me.

12 CHAIRPERSON REID: But in your preface, you

13 kind of -- like I said before, you went into some other areas

14 rather than staying on point.

15 MS. NEAL: They were all relevant.

16 CHAIRPERSON REID: You used up a lot of the

17 time.

18 MS. KING: Well, they were emotional issues

19 rather than legal issues. If you could get to the legal

20 issues.

21 CHAIRPERSON REID: They were --

22 MS. NEAL: Your decision is also an emotional

23 issue.

24 CHAIRPERSON REID: Say what specifically you

25 want us to hear about your points in this case.

26 MS. NEAL: I will get into that. I will get

1 into that. We don't feel it is too late to oppose Marquette
2 University just because it has been operating a private
3 college there already. I mean we appeal to you to think what
4 that says. Marquette has been operating illegally. I mean,
5 would you look kindly on somebody operating illegally?
6 Because that is what they have been doing. Marquette
7 University knew they were violating city laws when they
8 purchased this property. It had been a private residence.
9 They have a lot of lawyers and a lot of money, but they
10 purchased a private residence. They paid, I believe, a little
11 bit under \$800,000.00 for it. They didn't need to come into
12 our residential area. Residential means residential.

13 The Capitol Restoration Society, if I can
14 briefly address that. They were in a very difficult position
15 today. I remember that. And Lyle spoke with great emotion
16 because it is a very turbulent issue within the society and
17 the membership. The Society basically felt forced to get a
18 hearing they had to go along with supporting this. And their
19 negotiator at the time felt he had to cut that deal. It was
20 never voted on by the members. And the members are quite
21 appalled. So I ask you to look at that under that structure.

22 Marquette moved into the neighborhood and tried
23 to establish themselves as a private club. Now you surely
24 know that that is the most outrageous of use of residential
25 neighborhoods in this city, and I hope we can change that law.
26 The Restoration Society wanted to stop Marquette. That was

1 their goal. They ran out of money and time. They don't have
2 lawyers. They could not continue to fight an appeal in court.
3 So they did what they thought at the time or their negotiator
4 thought was the best thing and cut a deal. We won't oppose
5 you. We will support you if we can at least get a hearing.
6 And that is what is behind that. And I please ask you to put
7 that in perspective.

8 Let me make you aware of an important fact,
9 which I think by itself should disqualify Marquette.
10 Marquette University has entered into an exclusive arrangement
11 with a catering firm called Capitol Catering. Capitol
12 Catering rents the Marquette property for special events by
13 outside groups. I spoke with Capitol Catering yesterday to
14 Melissa. She told me I could rent any area of the house
15 including the basement, including the front yard and the patio
16 for a reception of up to 150 people. She said it would be
17 ideal for a wedding reception. I asked if I could hold a
18 political reception there and she said, yes, of course, it
19 would be great. I asked if she was sure it was now available,
20 and she did not hesitate to say yes, she was sure of that.
21 When I asked the cost, she said she needed to get the updated
22 book. She came back on the phone to say the rent would be
23 between \$850.00 and \$1,250.00 plus the catering cost. I asked
24 if I could use it for a night reception for 150 people from
25 7:00 to 10:00, and she said yes. I asked, what if ran later,
26 and she said, that is okay. But maybe midnight might be too

1 late for the noise because it is a residential area. She knew
2 the structure well and was quite able to describe it.

3 I would like to ask you to read two things that
4 is relevant to this in Sharon Ambrose's letter. One goes to
5 the nature of this dispute and the fact that Marquette has not
6 been a good neighbor to us all along. From Sharon Ambrose, "I
7 am disappointed that the University finds it necessary to
8 establish a school. When the University first purchase the
9 property, neighbors were assured that the home would be the
10 residence of administrators of Marquette's Semester in
11 Washington Program and would serve as a residence for
12 administrators and as a place to house Les Aspin memorabilia
13 and just small seminar meetings of scholars." She goes on to
14 say how disappointed she is that that has now changed.
15 Because that is not what the neighbors thought.

16 She also in this letter brings up the
17 neighborhood impact. She talks about what the other people
18 are going to talk about, and you will probably rule this not
19 relevant, about the so-called dormitory that is being used. I
20 won't get into that since they are going to. But I can tell
21 you that the students coming in and out of 502 East Capitol
22 are not these polite, diversified people you have heard about.
23 I won't relate to you what one of them said to me last week,
24 because I don't use that language, when I was reading the
25 public hearing notice. My husband will tell you I was shaking
26 when I arrived home. He ended his comment -- well, I am not

1 going to get into that. I will tell you there is great
2 concern in the neighborhood. These young men come and go out
3 of that residence at all hours. They are not just there a few
4 hours a week in the afternoon. They come and go at all hours.
5 We don't imagine that. And they are frequently not polite to
6 neighbors. They are frequently noisy, et cetera.

7 I hope you will deny the application. I hope
8 you will close the facility. It has been operating illegally.
9 That is not a sign of good neighborship. I would like to
10 extend to you, if you choose not to deny it, a list of
11 conditions that we hope that you will consider. I would like
12 to tell you that I spoke to 14 neighbors in the immediate
13 adjacent area when I saw the orange notice. I didn't realize
14 this hearing was on until the end of last week. We couldn't
15 get our act together in time to be here -- to have them here
16 today. I talked with 14 residents who live within 2 blocks.
17 12 of the 14 strongly opposed and were astonished at this and
18 had stories to tell. To say this is a very emotional issue,
19 part of it and a lot of it comes from those of us who simply
20 want to protect Capitol Hill and protect the residential
21 nature of the Hill. We know you are probably not going to
22 side with us, but we just wanted to ask you. And if I can
23 close just saying that, we would just like to ask you to think
24 about this as truly do they have to rent or own and operate a
25 private school in the midst of a residential block? No, they
26 don't. There is plenty of other territory for them to

1 purchase, and they knew that going into this. Thank you.

2 MR. HOOD: Madam Chair, I have just one quick

3 question and I would like a very brief answer.

4 MS. NEAL: Yes, sir?

5 MS. NEAL: Which ANC do you belong in, 6A?

6 MS. NEAL: 6A. And just like Father O'Brien

7 didn't know about and complained about 6B, no one I have

8 talked to knew about that meeting. Maybe it is our own fault.

9 But we all oppose it.

10 MR. HOOD: But you live in 6A?

11 MS. NEAL: Yes, sir.

12 MR. HOOD: And you represent some constituents.

13 What about your commissioner? Where is your commissioner

14 report?

15 CHAIRPERSON REID: We already had it.

16 MR. HOOD: No. My question is have you had any

17 dialogue with your commissioner?

18 MS. NEAL: Yes, I have.

19 MR. HOOD: Who is your commissioner? Is she in

20 here today?

21 MS. SCHMIDT: I am right here. Janet Schmidt.

22 MS. NEAL: And I was not at the meeting. I

23 admit I wasn't at the meeting. I didn't know about it.

24 MR. HOOD: Well, I guess my question goes to

25 who are you representing. She represents -- from a legal

26 standpoint, she is the commissioner. Who are you

1 representing?

2 MS. NEAL: I am representing myself and quite a
3 few neighbors who could not be here today because they didn't
4 know and it was too late to get them here.

5 MS. KING: And did they sign a petition did you
6 say?

7 MS. NEAL: We haven't had time to do that. We
8 will get it to you. No time. We were hoping for a
9 postponement quite frankly.

10 CHAIRPERSON REID: Mr. Hood?

11 MR. HOOD: No. That is okay. Thank you. No,
12 she answered my question. Thank you.

13 CHAIRPERSON REID: Okay. Thank you very much.
14 Any cross examination? Oh, no, I am sorry. Before that, the
15 other two witnesses. Sir or ma'am?

16 MS. GARRISON: Yes, thank you very much, Madam
17 Chair and members of the Board. I appreciate your indulgence
18 at this late hour. My name is Loretta Garrison. I live at 8
19 Fourth Street, S.E. I am here representing my husband, David
20 Garrison, and myself. I am also speaking on behalf --
21 generally on behalf of neighbors in my block. As I mentioned
22 earlier, I live right next door to 4 Fourth Street, S.E.,
23 which is used by Marquette University as the dormitory for the
24 students that they bring to their program and have been
25 bringing.

26 I disagree with Mr. O'Brien's statement that

1 housing is a separate issue and not in this application at
2 all, and I agree with Mr. Schauer that it is unfortunate that
3 your rules, at least at the outset, prohibit you from
4 considering the housing implications of running the
5 University. Because, in fact, it is the reason that we are
6 here. We believe that our experience, which has not been a
7 positive one, with Marquette University should bear on the
8 application. And regrettably because of that experience and
9 because of the position that the Board has taken today, I am
10 here now opposing this application.

11 I want to preface my remarks, though, by saying
12 that I am not opposed to diversity in the neighborhood. I
13 enjoy the diversity of an urban environment. My problem here
14 is the neighborhood and neighborliness. What we have is a
15 situation where we have transient, very young population,
16 constant turnover. They live in a very small apartment
17 building. I believe there are six units and there is by
18 testimony today 20 students. That means there are either 3 or
19 4 to an apartment. They are unsupervised. There is no adult
20 supervision. Now in the conditions on the building at 502,
21 there are to be no parties outside. However, the students
22 have parties outside and their area fronts on both Fourth
23 Street and East Capitol Street. They have parties at all
24 hours of the night.

25 CHAIRPERSON REID: Ms. Garrison, you have to
26 keep this to 502.

1 MS. GARRISON: But I am telling you, Madam
2 Chair, it is linked.

3 CHAIRPERSON REID: But we don't have any
4 purview on that other building, and I would suggest --

5 MS. GARRISON: But the behavior of the students
6 --

7 CHAIRPERSON REID: I would suggest that you
8 take that up with the administrators of the school because we
9 don't have any purview over that.

10 MS. GARRISON: We have. We have. And this is
11 our last recourse because the --

12 MS. PRUITT: Excuse me, ma'am, but this is not
13 the correct jurisdiction to address that. That is the whole
14 issue.

15 MS. GARRISON: But may I point out one thing?
16 Mr. O'Brien was asked directly if he oversees the students
17 conduct on the premises and in the neighborhood, and he very
18 deftly avoided answering the question. His response was I am
19 the director, I am a professor, I am a priest. The answer to
20 the question is that he does not oversee the students' conduct
21 in the neighborhood and that is the reason we are here. What
22 I want to press for, if the Board is so inclined to grant this
23 special exception, is that you include other conditions on the
24 way they take care of and manage these students. And that is
25 the issue.

26 MS. PRUITT: Madam Chair, I have some strong

1 concerns procedurally about going down this road. Because if
2 it is testified, we then need to deal with it in the order. I
3 think it will set -- if this is not part of the original
4 application, it is going to set up a case for an appeal.
5 Procedurally we are getting in very shaky ground here.

6 CHAIRPERSON REID: Again, if you have -- any
7 concerns that you have, you have your ANC Commissioner.

8 MS. KING: You also have --

9 CHAIRPERSON REID: That you can use.

10 MS. GARRISON: We did not know about this until
11 I saw the notice posted on Sunday evening.

12 CHAIRPERSON REID: But --

13 MS. GARRISON: We have been dealing as a
14 neighborhood with the landlord and with Marquette for three
15 years.

16 CHAIRPERSON REID: I understand that.

17 MS. GARRISON: And their attitude has been that
18 you may have a problem, but it is not our problem.

19 CHAIRPERSON REID: Okay, excuse me. You and I
20 cannot talk at the same time. We are trying to give you the
21 opportunity to speak. Nonetheless, when I try to speak, it is
22 not in your best interest to continue to talk.

23 MS. GARRISON: I do apologize.

24 CHAIRPERSON REID: Okay. What I was telling you
25 is that your ANC representative is behind you --

26 MS. GARRISON: I don't believe she is my rep.

1 CHAIRPERSON REID: She is not?

2 MS. GARRISON: No.

3 CHAIRPERSON REID: Then it is Mr. Simon. So

4 through --

5 MS. GARRISON: Well, Mr. Waldren actually.

6 CHAIRPERSON REID: Well, whoever the person is, those

7 concerns can be best addressed in meeting with and talking to

8 your ANC representative. And if you have conditions, then

9 that can be -- we cannot allow a condition to be imposed on an

10 order by an individual. So it has to be done with your body -

11 - your ANC or your governmental body that is established for

12 that purpose, and have it proffered through them if that is in

13 fact what you want to do. You just can't -- we can't allow

14 you to do it because we don't have the purview to do that.

15 MS. GARRISON: Well, I am afraid what has

16 happened is that we are being denied any avenue to address our

17 grievances.

18 CHAIRPERSON REID: But you are not.

19 MS. GARRISON: Well, we are because of the

20 procedure that you are operating under. If you move ahead and

21 grant the special exception, then it is done and over with.

22 CHAIRPERSON REID: We are not doing anything

23 today.

24 MS. KING: Madam Chair, may I make an

25 exception?

26 CHAIRPERSON REID: Yes.

1 MS. KING: If you have a noise problem with
2 that neighboring building --

3 MS. GARRISON: We have a series of problems.
4 That is one.

5 MS. KING: Then you should address the
6 Department of Consumer and Regulatory Affairs about those
7 problems. There is no precedent. It would be totally illegal
8 for us to impose a condition on 502, which we may -- if it is
9 granted, we very likely will impose conditions. But to impose
10 a condition on that property relating to another property is
11 out of the question.

12 MS. GARRISON: I appreciate that, Ms. King.
13 However, it seems to me that when you agree to establish a
14 school where the school is going to bring in from the outside
15 students and they will have to house them somewhere, whether
16 it is on our block or another block or wherever, that that is
17 going to create an impact, particularly if the University --

18 MS. KING: We understand your point.

19 MS. GARRISON: -- refuses to be responsible for
20 its students and leaves them in an unsupervised environment,
21 which is what is happening.

22 MS. KING: We understand your point. Thank you
23 very much.

24 MR. BROWN: My remarks would be completely out
25 of order. I have sat here patiently for six hours. I am
26 Holmes Brown. I -- just to clarify one point, I wrote down

1 that I was an opponent with conditions. I didn't know what to
2 choose because there wasn't an opportunity to say one was
3 neutral or something. I support a multiple use community and
4 I have been supportive of the Les Aspin Institute. However, I
5 share 80 feet of common wall with the residence in which many
6 of the students live, and I do think that if you are looking
7 at the impact of the case before you that it does make some
8 sense at least to talk about it. I have just been told that
9 doesn't make any sense or that you won't do it. So I remember
10 -- well, that is my situation.

11 I think that the neighborhood has concerns.
12 The testimony earlier said that the folks who are attending
13 occasional classes in the basement are not in 502. They are
14 elsewhere in the neighborhood. The impact comes elsewhere and
15 I think that that is relevant. But I have been told that it
16 isn't relevant and that we have to take it up with other
17 people. We have dealt with Marquette. We have dealt with the
18 owners of the property who have tried to helpful. The Lewis's
19 were supportive of our application here. But --

20 MS. KING: I am sorry, who are the Lewis's?

21 MR. BROWN: The Lewis's are the owners of the
22 property in which the students live. But I think what Laurie
23 has said is that the problem is you have folks coming to town
24 for six weeks who are unsupervised and we just have continuing
25 problems with noise, people parking -- not their cars, other
26 peoples -- garbage and this sort of stuff. We have dealt with

1 everybody else, and I guess we felt at least this was an
2 opportunity to try and make you aware of some of the ancillary
3 problems for the neighborhood that are associated with this
4 application.

5 CHAIRPERSON REID: And, sir, your point is well
6 taken. And just as we told this lady --

7 MS. GARRISON: Ms. Garrison.

8 CHAIRPERSON REID: Ms. Garrison, it is not
9 within our purview to impose any conditions on that property.
10 And we also suggested the procedures that you could best
11 utilize to accomplish your goal. And I don't think -- and I
12 may be mistaken, but I don't think that Marquette would be
13 opposed to trying to work with you in that regard to see to it
14 that that negative impact is somehow mitigated. And that is
15 the way to do it through your ANC.

16 MR. BROWN: Well, I wouldn't be here if I
17 hadn't made an effort to utilize some of the other options
18 that you've mentioned. I mean, we have talked to Marquette.
19 I have called them. They are responsive. I am just saying
20 there are some inherent problems.

21 CHAIRPERSON REID: What about your ANC?

22 MR. BROWN: Well, if kids are having a party on
23 the roof at 2:00 in the morning, ANC isn't going to help me.

24 MS. KING: Call the police.

25 MR. BROWN: I do.

26 MS. GARRISON: We have done that.

1 MS. KING: There is a nuisance line for the
2 police. That is who you call.

3 MR. BROWN: All right.

4 CHAIRPERSON REID: But again, through your ANC,
5 and having them to basically address your grievances through
6 conditions that can then be proffered to this Board to be put
7 into an order.

8 MR. BROWN: Okay. Well, once again, because
9 were outside the 200 foot area, I didn't know about this. As
10 I say, I have supported a multi-use neighborhood. I have
11 tried to work with folks. I just saw this as an opportunity.
12 You all have been here just as long as I have.

13 CHAIRPERSON REID: No, we have been here
14 longer.

15 MR. BROWN: Well, longer. And I get to go home
16 tonight and you get to come back here for another round
17 probably in the next --

18 MS. KING: We have another case if we ever
19 finish this one.

20 MR. BROWN: I see. So I am bowing out at this
21 point and I appreciate it.

22 CHAIRPERSON REID: Okay. But this particular -
23 -

24 MS. KING: Madam Chair, the letter from Mrs.
25 Ambrose.

26 CHAIRPERSON REID: Okay. This particular case

1 will not be decided today. At the end of this case, we will
2 then decide how to best take into consideration all of the
3 various testimony that we have heard here today and what to do
4 to best accommodate you.

5 MS. GARRISON: Madam Chair, a question. If I
6 understood correctly, at the very beginning at around 1:00,
7 you indicated that the record would remain open to receive
8 written testimony into --

9 CHAIRPERSON REID: That is exactly what I am
10 referring to.

11 MS. GARRISON: Okay. So the cutoff date is --

12 CHAIRPERSON REID: Well, we are not doing that
13 right now. We have to finish the case first. At this point
14 we have to take into the record the highlights of Council
15 Member Ambrose's letter in opposition to this particular
16 application. And then we will have closing remarks. We will
17 have cross examination and then closing remarks by the
18 applicant and then we will determine a time line for
19 submissions.

20 MS. SCHMIDT: Will there be an opportunity for
21 me to make one more statement?

22 MS. PRUITT: No.

23 MS. KING: No.

24 MS. SCHMIDT: It is very important.

25 MS. KING: It is going to be open. The record
26 will be open. You can write it.

1 MS. NEAL: This is the ANC you just told us to
2 go to.

3 MS. KING: We have been here since 9:00.

4 MS. SCHMIDT: One minute.

5 MS. KING: No. Out of order.

6 MS. NEAL: This is the ANC.

7 MS. KING: Out of order, Madam Chair. Out of
8 order.

9 CHAIRPERSON REID: We have to go in order. She
10 will have an opportunity to do so in writing.

11 MS. KING: Counsel Member Ambrose has made
12 three points. That this is a fundamental breach of
13 residential protections. That she is concerned that a school
14 in the sense commonly used. That our planning and zoning
15 discussions did not refer to university use. Third, the
16 concern about tangential neighborhood impacts, which is the
17 behavior of the students elsewhere than at 502. She concludes
18 by saying, "Should the Board determine that the use exception
19 being asked is appropriate, I urge that strict conditions be
20 placed on any order granting such exception in order to both
21 preserve the right of residential neighbors to the quiet
22 enjoyment of their homes and to avoid any precedent setting
23 action that might erode the residential character of close-in
24 East Capitol Street. I also will add as a matter of record
25 that I admire the long and distinguished history of Marquette
26 University and am grateful for the excellent education and

1 happy university experience it provided to one of my children,
2 who is an alumnus. We have been pleased to have Marquette
3 University as a neighbor thus far and look forward to an
4 appropriate resolution of this issue."

5 CHAIRPERSON REID: Thank you. Cross examination
6 of these witnesses.

7 MR. COTTINGHAM: Given the lateness of the hour
8 and you have said the record will be open, there are some
9 things we would take objection to as far as statements of fact
10 or illegality and things.

11 MS. PRUITT: Those -- Madam Chair, those can be
12 addressed --

13 MR. COTTINGHAM: In writing.

14 MS. PRUITT: In closing or in --

15 MR. COTTINGHAM: I was going to say, maybe we
16 could address them in writing to the Board to avoid a --

17 CHAIRPERSON REID: Not -- you mean address it
18 in writing to --

19 MR. COTTINGHAM: Well, to Ms. Neal particularly
20 and you.

21 MS. KING: The record is going to be open.

22 CHAIRPERSON REID: The record will be open.

23 MR. COTTINGHAM: The record will be open. So
24 rather than --

25 CHAIRPERSON REID: If you choose to do it that
26 way.

1 MR. COTTINGHAM: Rather than argue about the
2 legality of our presence there, for example.

3 MS. PRUITT: Well, Madam Chair, we would also
4 suggest that both the applicant and the parties in opposition
5 submit draft orders of proposed findings of fact and
6 conclusions of law where you can then address the issues
7 there.

8 MR. COTTINGHAM: Ms. King took my one question
9 for Ms. Neal about the last sentence in --

10 MS. KING: I beg your pardon?

11 MR. COTTINGHAM: You took my one question about
12 the last sentence in Ms. Ambrose's letter about her general
13 support of our presence as a university. Ms. Neal had quoted
14 the letter from Ms. Ambrose, and it concludes with the final
15 sentence.

16 CHAIRPERSON REID: No, wait one second.

17 MS. KING: I have already read that -- the last
18 two paragraphs.

19 CHAIRPERSON REID: First of all -- now this
20 part is over. The opposition part. The closing remarks by
21 the applicant, if you would like to address that in your
22 closing remarks, you may do it.

23 MR. COTTINGHAM: That is fine.

24 CHAIRPERSON REID: Thank you very much.

25 MS. KING: Please be brief.

26 FATHER O'BRIEN: I will be most brief. My

1 closing thought is the same as my opening one. That we have
2 been operating this way. I live at the house. The basement
3 is the private club that we want to have acceptable to the
4 neighborhood for a special exception. I take exception with
5 some of the comments made that we proceeded illegally and knew
6 we were proceeding illegally. That is patently false, and
7 anyone that could make such a scurrilous allegation should be
8 ashamed. So I just ask you to consider the facts, consider
9 where we are. That we have been there for four years and that
10 we moved to the special exception at the request of a
11 neighborhood organization that when the agreement was signed
12 there would be no further problems. And that is what
13 expected.

14 MS. KING: Father, to what degree are the
15 students supervised when they are not in your basement or in
16 your house?

17 FATHER O'BRIEN: Well, it -- we -- it depends
18 on where our students are. If it is 4 Fourth Street -- the
19 students who come in our program are not required to have
20 housing. We provide housing for those students that enroll in
21 our program, if they are unable to have housing. We have had
22 students come in from Arlington and elsewhere.

23 MS. KING: These are not Marquette students?

24 FATHER O'BRIEN: What is that?

25 MS. KING: The students are not enrolled in
26 Marquette University? Is that what you are suggesting?

1 FATHER O'BRIEN: No. I am suggesting that if
2 they enroll in our program, and we take -- in the fall, we
3 have 16 students enrolled. If they do not have housing, we
4 provide housing for them.

5 MS. KING: But they are totally unsupervised
6 when they are not under your -- you are the only staff person
7 involved in this operation, is that correct?

8 FATHER O'BRIEN: Well, we usually have an RA, a
9 resident assistant in the building.

10 MS. KING: In what building?

11 FATHER O'BRIEN: In the building where we are
12 housing our students at. We rent at 4 Fourth Street, a block
13 away.

14 MS. KING: And does this person have --

15 FATHER O'BRIEN: It is a resident assistant who
16 has been trained at the University in dealing with student
17 issues. Remember, these students are legal adults. They can
18 rent the apartment --

19 MS. KING: I understand that. But I mean if
20 you are saying that you have somebody there to supervise them
21 and what we have is nothing but a deafening outcry from the
22 people who live near them.

23 FATHER O'BRIEN: Yes.

24 MS. KING: I mean, this is not -- the town gown
25 situation is not unusual, and I am sure everybody who has ever
26 been a student or an academic is well aware of that. But this

1 seems to be particularly difficult at this time. And I just -
2 - do you have a house father or mother or whatever the modern
3 term for it is, in residence?

4 FATHER O'BRIEN: I will give you an example.
5 This fall, we have a 30-year-old woman who will be living in
6 that residence who is having her own apartment who is an RA, a
7 resident assistant trained by the University in dealing with
8 issues of student problems with roommates and conduct. We
9 have a code of conduct of the university. They can be
10 expelled if certain things happen. I mean, we have a long
11 track record of operating an institution, I think.

12 MS. KING: I understand that. My brother went
13 there as an E-12 in World War II.

14 FATHER O'BRIEN: Oh, excellent.

15 MS. KING: But I -- you know, there is no RA or
16 whatever you call it there now, is that correct?

17 FATHER O'BRIEN: There are no students there
18 now. They are gone. We have concluded their program.

19 CHAIRPERSON REID: Has an RA been there? Is
20 this something new or has the RA been there?

21 FATHER O'BRIEN: No, no, no. We have RAs there
22 on a regular basis. Someone who has been in the program who
23 comes back and who reports to me or to our assistant, Tom, if
24 there are any complaints about behavior. I haven't gotten
25 very many to be very frank. I don't know why neighbors would
26 not call --

1 MS. KING: But they know where you live now.

2 FATHER O'BRIEN: Oh, they sure do.

3 MS. KING: And I suspect they will come after

4 you.

5 FATHER O'BRIEN: I went over the other night

6 when one of the gentleman who was here said that there is

7 garbage outside one of the bins. I picked up the garbage,

8 took it and put it into the garbage cans because the kids were

9 moving out. There was a lot of excess garbage.

10 CHAIRPERSON REID: What is the average age of

11 the students?

12 FATHER O'BRIEN: They are usually juniors.

13 They are usually 21 years old -- 20 or 21. Juniors and

14 seniors.

15 CHAIRPERSON REID: Now I just have one question

16 regarding -- one of the witnesses testified that there was

17 some arrangement with the caterer to have parties at that

18 facility.

19 FATHER O'BRIEN: I am absolutely unfamiliar --

20 we do have an arrangement with that catering company if we

21 have a function. If I, as the director, have a function and I

22 invite you all in -- like we have a group of people from

23 Africa that are coming, a delegation from Ghana and Kenya. I

24 will not have 15 different caterers come in. I don't cook.

25 CHAIRPERSON REID: Was this leased out? I mean

26 leased out for weddings and things of that nature?

1 FATHER O'BRIEN: No. That goes back to about a
2 four-year program before we even got a private club status.

3 CHAIRPERSON REID: So that is no longer?

4 FATHER O'BRIEN: That no longer exists. I
5 don't know if it ever existed. Since I have been in charge,
6 which is from one month before it all started, that has never
7 occurred and it will not occur. Unless it is a Marquette
8 University official function, there is nobody in that
9 building.

10 CHAIRPERSON REID: Okay. So if there is an
11 official function where you are -- like the group from Africa
12 and you would have -- provide food or refreshments.

13 FATHER O'BRIEN: Yes. And when we use that --

14 CHAIRPERSON REID: How often does that happen?

15 FATHER O'BRIEN: Three times a year maybe.

16 CHAIRPERSON REID: All right.

17 FATHER O'BRIEN: And I wanted to correct
18 -- when Ms. King had asked before about the use of that
19 building, I do use it on Sunday. I have Mass there and we
20 have brunch afterwards. I said Tuesday and Thursday
21 afternoons. Every Sunday I have Mass at noon and we have --
22 the students rotate making brunch at my house.

23 CHAIRPERSON REID: And the Mass consists of
24 about how many people?

25 FATHER O'BRIEN: For the students.

26 CHAIRPERSON REID: Oh, the 20 students?

1 FATHER O'BRIEN: It depends upon how religious
2 the group is. But usually between 8 and 10.

3 CHAIRPERSON REID: Okay. Any other questions?

4 MS. KING: They don't sound very religious to
5 me, Father.

6 FATHER O'BRIEN: Oh, they are. You know,
7 during exam time, we go up to a full complement.

8 CHAIRPERSON REID: Any other closing remarks?

9 MR. COTTINGHAM: No. You've asked exactly the
10 points I was going to raise.

11 MS. KING: Okay. Thank you very much.

12 CHAIRPERSON REID: What we need to do is to try
13 to address some of the concerns of the persons in opposition.
14 And you heard what was stated here. So you can see that there
15 is some work that you need to do as far as community
16 relationships and the like and also I think it is very obvious
17 that they would like to see done as far as mitigating some of
18 the negative impacts that they have voiced here experiencing,
19 not directly with Marquette per se, nonetheless some of the
20 peripheral, which in effect while it may not be something that
21 you legally have to do in this purview, nonetheless just from
22 a good neighbor accommodating point of view, it would be wise
23 to try to at least address some of those issues. And Mr. Hart
24 will give you a time line as to -- there are some things that
25 have to be submitted and in response to and all that, and then
26 we will determine what date we will make a decision. In the

1 meantime, we also would like to have a draft order from both
2 sides, the opposition as well as the applicant that will then
3 address a lot of the issues in regard to the findings of fact.

4 MS. PRUITT: Are you looking to put this on for
5 September 8? That is where we need to start. Because that is
6 what will predicate when submissions are due.

7 MS. KING: Yes, don't you think?

8 CHAIRPERSON REID: Is there room on the
9 schedule? If so, then yes, we can do that.

10 MS. PRUITT: Yes. I mean, yes.

11 CHAIRPERSON REID: Okay.

12 MS. PRUITT: I would just urge that we be very
13 efficient at the meeting.

14 CHAIRPERSON REID: Okay.

15 MS. PRUITT: If that is the case -- and the
16 other question is are you leaving the record open for anything
17 to be submitted or just --

18 CHAIRPERSON REID: Well, we had agreed to leave
19 the record open to have submission by the ANC -- the ANC
20 submission, and then a response by the applicant.

21 MS. PRUITT: No. But I mean you are leaving
22 the record open --

23 MS. KING: The ANCs have made their
24 submissions.

25 MS. PRUITT: Right. So are you leaving it open
26 for anybody to put anything in or only discrete items? That

1 needs to be clear.

2 MS. KING: I think our agreement was for the
3 community to -- is that -- is this the case? Weren't we going
4 to leave this record open?

5 CHAIRPERSON REID: No. What I said was that
6 the community, through their ANC -- if there is additional
7 information or if there is additional concerns or what have
8 you, to do it through the ANC. And if they want to formulate
9 conditions or whatever, then you do it through --

10 MS. NEAL: Then we have to have time to go to
11 the next ANC Commission meeting, which is not until September,
12 like you gave the other applicant.

13 MS. PRUITT: So we are back in the same process
14 where then the applicant, if we --

15 MS. NEAL: If you force us to go the ANC, you
16 have to give us time.

17 MS. PRUITT: Excuse me, ma'am, you can't talk
18 from the audience.

19 MS. NEAL: I am sorry.

20 MS. PRUITT: We understand. If you are doing
21 that, then you also need to make sure that the applicant is
22 willing to waive his response time. And that is the same
23 issue. And the other question is the ANC has made their
24 statement. You can leave the record open for individuals to
25 comment.

26 MS. KING: Yes, I don't see that we have to

1 involve -- both ANCs have made their statement. We have it in
2 writing. It was all duly done. There is no ambiguity about
3 the ANC statement. I think what we are doing is leaving the
4 record open for any members of the community who need -- who
5 wish to make -- to add further to the record, either in favor
6 of or in opposition to this application.

7 CHAIRPERSON REID: That is fine with me if that
8 is agreeable to everyone. That is fine with me. Basically I
9 just wanted to make sure that the concerns were being
10 addressed in whatever method we could best accomplish it.

11 FATHER O'BRIEN: With the understanding that
12 ANC 6B --

13 MR. HOOD: Excuse me. I wanted to associate my
14 comments with Mr. Schauer. As he says, it is a community
15 issue. Let's leave it open and let's see if they can resolve
16 it, whether it is the ANC-6A or 6B, the people in opposition,
17 Marquette. Let's leave it open and see if they can resolve
18 some of these issues. So when September rolls around, it may
19 make our decision a little easier.

20 CHAIRPERSON REID: Work itself out.

21 MR. HOOD: Right. Hopefully. But if not, I
22 will let Marquette know that I do have some concerns that have
23 been addressed -- I mean, that have already been stated.
24 Hopefully within that time frame, they could solve the issue.

25 CHAIRPERSON REID: Okay, what is the time line,
26 Mr. Hart.

1 MS. PRUITT: Okay. Given that, we are leaving
2 the record open for submissions from anybody. Submissions
3 would be due August 25. Responses to those submissions by the
4 applicant or anybody who wants to respond would be due by
5 September 1, so that the Board can convene a meeting on
6 September 8 for a decision. We would also like to get
7 findings of fact and draft orders or draft findings of fact
8 and conclusions of law by September 1.

9 MR. COTTINGHAM: By September 1?

10 MS. PRUITT: Correct.

11 MS. SCHMIDT: Who provides --

12 MS. PRUITT: Excuse me?

13 MS. SCHMIDT: Who submits those?

14 MS. PRUITT: The opposition ANC and the
15 applicant.

16 MS. SCHMIDT: Okay, thank you.

17 MS. PRUITT: And if you have any questions, you
18 are more than welcome to come to the Office of Zoning and we
19 can show you what a draft order looks like so you can get some
20 idea of what we like to see.

21 MS. KING: But she -- her organization is in
22 favor.

23 MS. PRUITT: That is fine. We will take them
24 all.

25 CHAIRPERSON REID: Mr. Simon?

26 MR. SIMON: Yes. We are pleased to go with

1 either route that the Board would like. But to be able to
2 respond to Mr. Hood's suggestion about working an agreement
3 out, for 6B to work something out would require an action by
4 the Commission. The Commission meets on the second Tuesday of
5 September. That would bang up against this schedule.

6 MS. PRUITT: I think the question is 6B has
7 already taken its position unless they are going to rescind
8 that position.

9 MR. SIMON: Right. But that was Mr. Hood's
10 suggestion as I understood it.

11 MS. PRUITT: I understand. I understand. But
12 that is also -- I mean, my concern is keeping the process
13 correct and legal and not allowing the process to be open or
14 subject to challenge for procedural mistakes.

15 MR. SIMON: I appreciate that, and we won't do
16 anything to interfere with that. I was hearing the suggestion
17 as being very analogous to the ABC Board's use of voluntary
18 agreements, where an ANC which contests an ABC license is
19 encouraged to work out an agreement, and to further that
20 possibility, the Board will provide some extended period. We
21 report at the status hearing. If we can't, then we go to a
22 protest hearing. The advantage to all parties is that there
23 is no longer a contested case.

24 MR. HOOD: And that is exactly where I was
25 trying to go.

26 MS. PRUITT: Well this is -- by the nature of

1 the case it is contested, period.

2 MR. HOOD: But, Mr. Simon, I think -- what are
3 you actually asking? Are you saying you don't have enough
4 time to respond?

5 MR. SIMON: I am saying that this being August,
6 ANC-6B is out during the month of August. So our next meeting
7 will be in September. In order for the Commission to withdraw
8 its protest, which is what would be wanted --

9 MR. HOOD: Can we do the same thing that we did
10 --

11 CHAIRPERSON REID: Let me ask this. If not on
12 September 8, then the following week is what?

13 MS. PRUITT: The next meeting date is October.

14 CHAIRPERSON REID: No. That is true. However,
15 we could have a special meeting prior to the hearing date.

16 MS. PRUITT: Which would be the 21st, I
17 believe.

18 MR. HART: The 15th --

19 CHAIRPERSON REID: The 15th. Can we do it
20 then? Have a special meeting --

21 MS. KING: Well, we have already -- the whole
22 calendar for September is screwed up because we set the 22nd
23 as an all-day hearing for waste management because Paul told
24 us two weeks ago that we were meeting on the 1st and the 15th.
25 So --

26 CHAIRPERSON REID: Let us try to have a special

1 meeting prior to the hearing in which we could take this case
2 up, and that would give them ample time to meet and to come to
3 some resolution. How about that?

4 MS. PRUITT: I just need to get the date of
5 when you want to have the hearing so I can back up from there.

6 CHAIRPERSON REID: You need what?

7 MS. PRUITT: So are you suggesting that you
8 convene a special public hearing on -- oh, excuse me, I have
9 the calendar right here.

10 CHAIRPERSON REID: No, a public meeting at
11 9:00.

12 MS. PRUITT: A special public meeting on the
13 day that we have our hearing on the 22nd?

14 CHAIRPERSON REID: No. I was thinking more of
15 the -- don't we have a meeting on the 15th or the 16th?

16 MS. KING: No.

17 MS. PRUITT: No. It will be on the 22nd.

18 CHAIRPERSON REID: Right. That is right.
19 Okay.

20 MS. PRUITT: The 8th and the 22nd.

21 CHAIRPERSON REID: Would that be adequate, Mr.
22 Simon? Would that be adequate if we did a special meeting on
23 the 22nd at 9:00?

24 MR. SIMON: Yes. ANC-6B --

25 CHAIRPERSON REID: For the decision. To give
26 time for the ANC to meet and for you all to try to come to

1 some resolution among yourselves and the like.

2 MR. SIMON: Yes, I understand the suggestion.

3 MS. KING: And in the meantime, you might talk
4 to Mr. -- to the Capitol Hill Restoration Society and to
5 Marquette and to all of the players and maybe you all can get
6 together and hammer out an agreement as to what you all want
7 to do.

8 MR. SIMON: That is what I understand the
9 suggestion to be.

10 MS. KING: In the meantime, could we recess for
11 a moment?

12 MS. PRUITT: Well, I would like to just get the
13 conditions since we have changed the times, please. So the
14 submissions would be due by September 8 and responses by
15 September 15 for the 22nd meeting. And findings of fact would
16 then be due on the 15th.

17 MR. COTTINGHAM: Right.

18 CHAIRPERSON REID: Okay. We are going to take
19 a very short 3-minute recess and we will be right back to
20 finish up two cases.

21 (Whereupon, at 7:50 p.m. off the record until
22 8:00 p.m.)

23 MR. HART: Please raise your right hand to be
24 sworn.

25 (WITNESSES ARE SWORN.)

26 CHAIRPERSON REID: Okay, tell me your name

1 again?

2 MS. JOHNSON: Alberta Johnson.

3 CHAIRPERSON REID: Okay. And your address

4 again, Ms. Johnson? Your address, Mrs. Johnson?

5 MS. JOHNSON: My address is 6215 Longfellow

6 Street, Riverdale, Maryland.

7 CHAIRPERSON REID: Okay. Now we just discussed

8 with you when you were here before about the procedure, and

9 now you are straight, right?

10 MS. JOHNSON: Yes, ma'am.

11 CHAIRPERSON REID: Okay. So what you need to

12 do is to just go straight down 205 and tell us how you comply

13 with the regulations.

14 MS. JOHNSON: First, I want to say thank you

15 for giving me the opportunity to get myself together and your

16 patience and your consideration.

17 CHAIRPERSON REID: Okay. No problem. You don't

18 have to stand.

19 MS. JOHNSON: I can't hear that well, so I

20 would like to stand.

21 CHAIRPERSON REID: Okay, however you are

22 comfortable.

23 MS. JOHNSON: I think I can present myself

24 better. We will have no problems with the community. The

25 community is in agreement with us having a center. There is

26 no center in that area for childcare.

1 CHAIRPERSON REID: At least within 1,000 square
2 feet?
3 MS. JOHNSON: Right.
4 CHAIRPERSON REID: All right.
5 MS. JOHNSON: No center. And we will not be of
6 any adverse conditions with the community.
7 CHAIRPERSON REID: You haven't had any
8 complaints from anyone after they saw your posting of your
9 hearing for today?
10 MS. JOHNSON: No. We haven't had any
11 complaints.
12 MS. KING: Have you had any contacts with the
13 ANC, the Advisory Neighborhood Commission 7D?
14 MS. JOHNSON: They got notice. Everybody got a
15 notice and we haven't had any --
16 MS. KING: Nobody has been in touch with you?
17 MS. JOHNSON: No.
18 CHAIRPERSON REID: Okay, what about the
19 parking?
20 MS. JOHNSON: Parking -- we are going to use
21 the church parking lot which is right next to the house.
22 CHAIRPERSON REID: How many spaces is that?
23 MS. JOHNSON: We have 9 spaces.
24 CHAIRPERSON REID: Okay, adequate parking. What
25 about the play area?
26 MS. JOHNSON: We have a play area in the back

1 and front yard of the house.

2 MS. KING: Is that fenced in?

3 MS. JOHNSON: Ma'am?

4 MS. JOHNSON: The back is fenced in. The front

5 is not totally fenced, but we do have a brick wall, but it is

6 short. We have -- if we get the zoning and we get licensed

7 for the daycare center, we will then use the other property on

8 the corner for a playground. So that is in the works. If we

9 get the place --

10 CHAIRPERSON REID: What property is on the

11 corner? What is on the corner?

12 MS. JOHNSON: There is only one other house in-

13 between the church and the corner. And the church owns the

14 two lots on the corner. So now we own everything except the

15 one house, and that house -- the people who own that house is

16 a member of the church and they are in agreement with us

17 having the daycare center. So we don't have any opposition.

18 MS. KING: But the playground -- if you get

19 permission to use this house, where will the playground be?

20 Will it be on the same property as the child development

21 center or located someplace else?

22 MS. JOHNSON: It would be one door from the

23 center.

24 MS. KING: And it is another piece of property

25 owned by the same church?

26 MS. JOHNSON: Yes.

1 MS. DINKINS: Initially, they intend to use the
2 same -- the backyard of the actual house.

3 MS. KING: I understand. But she did mention
4 that there was --

5 MS. DINKINS: And in addition --

6 CHAIRPERSON REID: Excuse me, you have to give
7 your name and your address.

8 MS. DINKINS: My name is Diane Dinkins. I live
9 at 6215 Longfellow Street, Riverdale, Maryland. The 20
10 students in this plan are composed of 10 students that will
11 probably be early and late childcare and 10 that would be
12 there through the day. So it is mostly -- you know, it won't
13 be that many students there either. So that yard will be --
14 will give them lots of space if they have to take shifts with
15 half of them.

16 MS. KING: Now, where will the drop-off and the
17 pick-up for the children be?

18 MS. JOHNSON: Drop-off and pick-up? Drop-off
19 and pick-up can be in front of the house because there is no
20 parking on that side of the street. So you can just drop off.

21 MS. KING: Okay. So you will have staff people
22 who will go and escort the children from the car to the --
23 into the school?

24 MS. JOHNSON: Or the parent will bring them
25 into --

26 MS. KING: Well, if there is no parking there,

1 the parent can't do that. I mean, they can't park and get out
2 of the car and take the children in.

3 MS. JOHNSON: We are going to be there to
4 assist them. But just to -- you know, they could run their
5 child in or we could pick them up, either one. But right
6 around the corner, if they go around the corner, is our
7 parking lot. So they can park and bring them in or we will be
8 out there to pick them up.

9 MS. KING: Okay. Would it not be better if you
10 had them drop the children off in the parking lot rather than
11 on the street?

12 MS. JOHNSON: Yes, it would be better.

13 MS. KING: Wouldn't it be safer?

14 MS. JOHNSON: Yes.

15 MS. KING: Would you have any objection to our
16 imposing that as a condition?

17 MS. JOHNSON: None at all.

18 MS. KING: Okay. What about food service? Are
19 you catering? Are you providing food?

20 MS. JOHNSON: We are going to provide the food.

21 MS. KING: From -- that you are cooking on the
22 premises?

23 MS. JOHNSON: Yes, ma'am.

24 MS. KING: And you will have all the necessary
25 permits for that?

26 MS. JOHNSON: Yes.

1 MS. KING: And inspections of your kitchen?

2 MS. JOHNSON: Yes. I have been to the

3 orientation that the Childcare Development Program -- I have

4 been there and they told me the requirements, what we need.

5 MS. KING: Okay. Now one thing that happens if

6 you are going to be catering to that number of children, and

7 some of them are going to be there for a 12-hour period, that

8 is a lot of meals and snacks and so forth and a lot of

9 probably plastic and paper and products and trash from the

10 kitchen and so forth, which could cause a bad condition for

11 the neighborhood. Are you -- do you have a dumpster and are

12 you -- is it going to be picked up twice a week?

13 MS. JOHNSON: We have that on the church

14 grounds. And we have -- it is secure.

15 MS. KING: And how often is it emptied?

16 MS. JOHNSON: I really don't know. But we

17 don't have a problem with the church. You know, so --

18 MS. KING: Yes, but you are --

19 CHAIRPERSON REID: Is it a regular contractor?

20 MS. JOHNSON: Yes. If we need to have

21 additional pick-up, we will have it.

22 MS. KING: Okay.

23 CHAIRPERSON REID: If appropriate, okay.

24 MS. KING: Because, you know, two or three

25 meals a day for 20 kids produces an awful lot of garbage.

26 MS. DINKINS: The church is used to handling

1 large influxes of trash whenever they have a funeral and we
2 have family reunions there -- you know, lots of special large
3 occasions.

4 MS. KING: But this is going to be -- this
5 isn't going to be special events. This is going to be
6 something that happens --

7 MS. DINKINS: Right. But what I am saying is
8 that they are used to handling it if need be.

9 MS. JOHNSON: We will make arrangements not to
10 be a nuisance and have trash. Because we know that is a
11 health hazard.

12 MS. KING: And this building is directly next
13 to the church?

14 MS. JOHNSON: Yes.

15 MS. KING: So, I mean, there is no gate or
16 barrier between the church parking lot and your backyard, or
17 is there?

18 MS. JOHNSON: The house has a gate or a fence.

19 MS. KING: A gated fence so that the children,
20 if they are playing in the backyard or are delivered to the
21 backyard aren't in danger from the church parking lot that is
22 immediately next to it?

23 MS. JOHNSON: Right.

24 CHAIRPERSON REID: All right. We will also go
25 into conditions in a few minutes. But right now, the ANC said
26 that -- you did notify the ANC, but we don't have a letter

1 from the ANC. So the assumption is that they don't have a
2 problem with your application and there are no other
3 government reports.

4 MS. KING: No.

5 CHAIRPERSON REID: Persons or parties in
6 support of the application? Did you want to say a few words?

7 MS. DINKINS: I just had a couple of --

8 CHAIRPERSON REID: Your name. Give your name.

9 MS. DINKINS: Diane Dinkins. I just had a
10 couple of points which I am sure you are very, very well aware
11 of. It is so obvious by doing this they intend to have a
12 staff of 4 and provide service for 20 students or 20 children.
13 So with that, they are allowing for dedicated jobs for the
14 community and allowing up to 20 parents to have jobs as well.
15 And we have also heard today how difficult it is to acquire
16 property for large functions and large organizations in this
17 neighborhood. This church is sizeable, and for them to be able
18 to add that extra service to the community plus have them
19 accommodate the same number of members would be a difficulty
20 if they were to have to do it some other place. So they are
21 adding a service to this community.

22 CHAIRPERSON REID: Thank you very much.

23 MS. DINKINS: Thank you.

24 CHAIRPERSON REID: Persons or parties in
25 opposition? Seeing none, closing remarks by the applicant.

26 MS. JOHNSON: Right. My closing remarks are

1 that several years ago in the church, we had before and after
2 for the school that is across the street from our church. We
3 provided before school and after school services to them. And
4 when we stopped, the school asked us to try to help them
5 because there were a lot of mothers who had to be to work
6 before school opened, and that is why we started it. And now
7 that we have the house, I wanted to revise our original
8 application. There was a mistake on it. We said that we
9 would have children from 5 to 11, but I think we could benefit
10 the community by having ages 2 to 12. That would be age 2 up
11 until time they go to school, and we could have the before and
12 after that would -- since it is an elementary school, 12 is
13 about the age that they would be out of elementary school.
14 Also, it was noted in the first application that we would only
15 use the first floor of this split level house, but we are
16 going to use the whole house. I wanted to make those two
17 revisions, please.

18 CHAIRPERSON REID: Okay. Ms. Pruitt-Williams,
19 is that permissible to --

20 MS. PRUITT: I am just trying to -- that is
21 what I was trying to ascertain.

22 CHAIRPERSON REID: Do we need an announcement?

23 MS. PRUITT: It doesn't change the relief that
24 is requested, I don't believe.

25 CHAIRPERSON REID: Two floors and also the ages
26 from 2 to 12 rather than 5 to 11.

1 MS. PRUITT: I don't think the ages -- the only
2 concern I have with the changes of the age, when you go down
3 to 2 years old, I don't know if -- this is not our
4 requirement, but Child Development may require more staff for
5 younger children.

6 CHAIRPERSON REID: Well, also in 205, it states
7 that they must be in compliance with all the --

8 MS. PRUITT: Right. And if there is some
9 reason that Child Development requires 6 staff and we have
10 only granted it for four, then they would not be able to
11 operate it for two-year-olds, or at least not for up to 20
12 children. They can leave it to 20 children, and you can also
13 leave it for four staff. How you choose to sort of distribute
14 the ages and the requirements that will be imposed by Child
15 Development, we don't have any control over. But you cannot
16 exceed 20 children or 4 staff. So it may mean you would not
17 be able to take in as many if you are required to have more
18 staff for younger kids.

19 MS. JOHNSON: Okay.

20 MS. PRUITT: If you understand that.

21 MS. JOHNSON: Yes.

22 MS. PRUITT: The other question I have though
23 was hours of operation. I don't know if that has been
24 addressed.

25 MS. KING: 6:30 to 6:30.

26 MS. PRUITT: Thank you.

1 MS. KING: Monday through Friday.

2 CHAIRPERSON REID: All right. Are you done

3 with the closing remarks?

4 MS. JOHNSON: Yes.

5 CHAIRPERSON REID: Okay. So are you going to

6 request that we give you a decision today, which is called a

7 summary order bench decision?

8 MS. KING: Yes.

9 MS. JOHNSON: Yes, a summary order decision.

10 CHAIRPERSON REID: Okay.

11 MR. HOOD: Madam Chair, I make a motion that we

12 approve Case No. 16478, East Friendship

13 Baptist Church with Ms. King giving us the permission?

14 MS. KING: Second.

15 CHAIRPERSON REID: You seconded?

16 MS. KING: I seconded.

17 MS. PRUITT: I have the conditions. I have

18 them written down.

19 MS. KING: I seconded. 20 children ages 2 to

20 12 years of age, 4 staff. The hours are 6:30 a.m. to 6:30

21 p.m., Monday through Friday. At least one parking space to be

22 provided in the church parking lot next door. Drop-off and

23 pick-up to be at the church parking lot next door, not on the

24 street. Any play area, whether it be part of the yard of this

25 house or elsewhere should be secure. And if the children are

26 moved from the house to that to another play area, they need

1 to be escorted and cared for. And then the usual.

2 CHAIRPERSON REID: Trash picked up as
3 appropriate.

4 MS. PRUITT: And my other question is is it
5 trash picked up as appropriate and consolidated and
6 coordinated with the church? Is that how it is done?

7 MS. JOHNSON: Yes.

8 MS. KING: We just -- it is there trash and it
9 gets picked up as appropriate.

10 CHAIRPERSON REID: Do we want to limit it to 5
11 or 10 years?

12 MS. KING: Okay, let's limit it to -- let's
13 have it 5 years for the first order to make sure that there is
14 no problems with the neighbors. And then in five years, you
15 can come back and we will talk about it again.

16 MS. JOHNSON: Thank you.

17 MS. PRUITT: Staff would record the vote as 3
18 to 0 to approve. Motion made by Mr. Hood, discretely seconded
19 by Ms. Reid. Thank you.

20 MS. JOHNSON: Thank you.

21 CHAIRPERSON REID: Thank you. Good luck. You
22 should have your order in about two weeks. The last case of
23 the day, Mr. Hart?

24 MR. HART: Application 16455 of the Amoco Oil
25 Company pursuant to 11 DCMR 3108.1 and Subsection 726.1 for a
26 special exception to enlarge an existing gasoline service

1 station to include the sale of motor vehicle fuel in a C-2-A
2 District at premises 3426 Georgia Avenue, N.W., Square 2894,
3 Lot 906. Would those persons intending to testify please
4 stand and raise your right hand.

5 (WITNESSES ARE SWORN.)

6 MS. KING: No opposition in this case, Madam
7 Chair. I suggest that Mr. Brown give us the highlights and we
8 move on with it.

9 CHAIRPERSON REID: All right.

10 MR. BROWN: Madam Chair, I would be glad to
11 cooperate. My name is Patrick Brown --

12 CHAIRPERSON REID: Given the lateness of the
13 day.

14 MR. BROWN: Yes. I am still with Greenstein,
15 DeLorme and Luchs.

16 MS. KING: You think.

17 MR. BROWN: Yes. I haven't been back, but I am
18 hopeful. With me today just briefly is Steve Faletto. He is
19 the zoning coordinator for the Amoco Oil Company. Next to him
20 is Adam Volanth. He is the Project Engineer from Bohler
21 Engineering, the project engineering firm, and my co-counsel,
22 Tony Rachal on the end. We are establishing a -- or enlarging
23 an existing gas station that has been there since 1954. The
24 only difference in a nutshell is that an existing building is
25 being demolished and a building of about a quarter of the size
26 will be built to replace it. The canopy that exists will be

1 expanded to accommodate six pumps rather than four. So if you
2 count canopy and building, it is a slight increase in the bulk
3 on the site. As a practical matter, you've got a very small
4 building now and a bigger canopy. So the impact, I think,
5 just intuitively is probably going to be less. Not intended
6 to be a new draw of customers, but just to serve the existing
7 ones.

8 The standards set forth -- the easy ones are it
9 can't be within 25 feet of a residence district unless -- and
10 that is applicable here -- it is separated by a public alley
11 which runs at the back of the site just north of the --
12 actually, to the west of the green space there. We don't
13 believe testimony will be given to be presented both in the
14 written form or today -- there will be no objectionable or
15 dangerous conditions. The operation will continue pretty much
16 as it has been on a gas sale basis. You will see quite a few
17 site enhancements -- landscaping and other security and
18 lighting measures, which I think will actually make it a
19 better looking station, a safer station, and less of a --

20 MS. KING: The only residential property that
21 is contiguous to yours is above that public alley?

22 MR. BROWN: There is a small apartment building
23 here. The alley is here.

24 MS. KING: And then the rest of the surrounding
25 is commercial?

26 MR. BROWN: Commercial is here and there is not

1 much right back here. It is vacant. And then on the other
2 side of Park Road here is the commercial building that comes
3 from back --

4 MS. KING: Commercial or residential?

5 MR. BROWN: Commercial.

6 MS. KING: Commercial. So you've got that
7 heavy -- you've got that lawn and the heavy tree screening and
8 so forth between yourself and the only residential property?

9 MR. BROWN: And there is a fence here too that
10 is existing that will be supplemented. Some of the trees are
11 already here and some will be added. Things like the pay
12 phone here will be removed because that is a source of
13 loitering that isn't needed. A dumpster here now will be
14 removed and replaced with an enclosed trash area. Three
15 parking spaces, one, two, three, where there were none now.
16 All of them are accessible at all times, even though the
17 statute or the regs allow you to be able to move cars. They
18 will all be fully accessible. You will have the six pumps
19 here and here. One thing -- when the plan was first proposed
20 and submitted, we were coming out about 24 feet from the rear
21 property line. One of the -- and we met with the ANC and one
22 of the issues was to try to -- while this was important, to
23 minimize it to avoid any kind of nuisance area and also to
24 kind of open up the site a little further for circulation
25 purposes. So what we would request is that under the
26 regulations you could go back up to 10 feet from the property

1 line. We would like the flexibility to go anywhere from where
2 it is now to within 10 feet of the boundary, again, to
3 accommodate that.

4 MS. KING: Oh, I see. The ANC is suggesting
5 that off a public alley that an empty space like that with
6 trees and grass would be an invitation to illicit activity.

7 MR. BROWN: Yes. Which unfortunately there is
8 some in this area. I think the lighting on the canopy and
9 then there are lights -- I am trying to be brief -- but he
10 lights here, here and here. They are smaller than the
11 existing ones and lower to focus the light. To accomplish the
12 same job without having impacts off-site.

13 MS. KING: And I gather even though we have
14 nothing on the record from the ANC that you have met with them
15 and discussed this project with them?

16 MR. BROWN: Yes, we did. We met the 7th of --
17 no, a week ago today we met with them and made a presentation
18 and discussed some issues. While I don't believe they have
19 submitted anything, there was certainly no opposition and I
20 think they were pleased. Some of the things that were
21 discussed about the rear of the site, kind of tightening that
22 up, and the pay phone. One other item was just kind of
23 stretching it out and making it less prone to congestion. I
24 think we have accomplished that.

25 MS. KING: What ANC was it?

26 MR. BROWN: 1A.

1 MR. HOOD: Ms. King, I don't know what the
2 procedures are, but one of the commissioners is on staff here.
3 So I don't know -- I know that through my community
4 involvement.
5 MS. KING: One of the commissioners --
6 MR. HOOD: Commissioner Johns.
7 MR. BROWN: Yes. He is the treasurer of ANC-
8 1A.
9 MR. HOOD: So I don't know. He is the
10 commissioner, so all that can be verified.
11 MR. BROWN: We will be happy to have him
12 report. I thought it was a productive meeting that we had.
13 MS. KING: Okay.
14 CHAIRPERSON REID: Have you --
15 MR. NYARKU: If I am allowed to do that now --
16 CHAIRPERSON REID: To do what?
17 MS. KING: He is an ANC Commissioner in 1A.
18 MR. NYARKU: I was at the ANC meeting.
19 CHAIRPERSON REID: Oh, I am sorry. I was
20 reading. You mean this gentleman? All right. You can give
21 us a brief summation.
22 MR. NYARKU: Can I do that?
23 CHAIRPERSON REID: Yes.
24 MR. NYARKU: Yes. I think ANC-1A approved this
25 application.
26 CHAIRPERSON REID: That is from a very reliable

1 source.

2 MR. NYARKU: Initially, I was --

3 MR. HOOD: But I do have concerns.

4 CHAIRPERSON REID: Mr. Hood?

5 MR. HOOD: On the application here, are you

6 doing away with the three bays?

7 MR. BROWN: Yes. The three bays will be

8 -- and the three bays are in the existing building which will

9 be demolished and replaced by the security building.

10 MR. HOOD: So this is going to be a self-

11 service gas station? I mean, it won't have any changing tires

12 or anything?

13 MR. BROWN: That is correct.

14 MS. KING: Does the gas station advisory

15 committee still exist? Do you have to go to them to get

16 permission to stop doing that?

17 MR. RACHAL: Ms. King, yes we do and we will

18 proceed to do that.

19 CHAIRPERSON REID: Is that with Office of

20 Planning?

21 MS. KING: No. It is under the -- it is in the

22 energy office and it is an advisory committee that --

23 MR. RACHAL: And I would like to offer the

24 point that the advisory board exists by a statute which has a

25 sunset provision and there is a bill pending in the council to

26 extend that period.

1 MS. KING: I know. Bill Spalding introduced
2 that legislation and you know how long it is since Bill has
3 been on the City Council.

4 MR. RACHAL: Yes, that is right. But there has
5 been over the several years amendments to the process and that
6 whole procedure may be revised as the council takes it up a
7 second time.

8 MS. KING: This is presupposing that the gas
9 station advisory committee is going to say it is okay for you
10 to not do full service anymore, is that correct?

11 MR. RACHAL: That is correct. In accordance
12 with the standards set forth in the statute.

13 MS. KING: Okay. So regardless of what we do,
14 you can't do that unless the gas station advisory says that
15 you can?

16 MR. RACHAL: That is correct.

17 MR. HOOD: I don't know -- I know it is not in
18 our jurisdiction, but it seems like all the cases that are
19 coming before us now are taking out the service piece of gas
20 stations. Let me ask another question. What is the closest
21 gas station that has full service, where you can go in and get
22 service and change a tire and work on your car?

23 MR. BROWN: I believe it is a -- well, there
24 are some independent non-service station repair facilities on
25 Georgia Avenue, but I believe there is a Texaco station two or
26 three blocks north on Georgia. I guess that would be -- yes,

1 it would be past where the Georgia Avenue Metro Station is
2 going to be. So it is two or three blocks. I believe that is
3 full service.

4 MR. HOOD: Will you still have a public air
5 pump?

6 MR. BROWN: Pardon?

7 MR. FALETTO: Yes, we will.

8 MR. HOOD: Will you eventually serve food in
9 the Amoco station?

10 MR. BROWN: It is limited by the nature of that
11 security building where there will be an employee inside. The
12 only thing they are going to be able to sell there are
13 prepackaged items -- a coke, chips and things like that.
14 Because there will be no direct customer access to that
15 building. There is a foyer where you can stand out of the
16 elements and pay your money through one of the metal boxes.
17 So that there will be no fresh food. The ANC suggested, and
18 it was a good idea and already Amoco policy, no drug
19 paraphernalia -- no rolling papers be sold there.

20 MS. KING: What a good idea.

21 MR. BROWN: Yes. So -- and that is easy for
22 Amoco to agree to. Very limited -- a pack of cigarettes and
23 gum. Something that somebody can reach from a shelf that you
24 can see from outside.

25 MS. KING: Or in a vending machine.

26 MR. BROWN: Pardon?

1 MS. KING: Or in a vending machine.

2 MR. BROWN: Except for there is going to be no
3 direct customer access. So that you would have to point or
4 say I would like a pack of cigarettes or a coke.

5 MS. KING: Mr. Hood, this gas station advisory
6 committee was instituted about 20 -- more than 20 years ago
7 because of the flight of full service gas stations from the
8 District. The legislation has always had a sunset provision
9 and it has always been revived at the moment of its death.
10 And I guess probably the rules have changed since I knew it in
11 its early manifestation. But there is a group that includes
12 people from the government and I believe from the community as
13 well as from the gas industry who argue about this question.
14 It is a matter of great concern that there are so -- it isn't
15 that every service station will also change your oil and so
16 forth any more.

17 MR. HOOD: Thank you, Ms. King, for pointing
18 that out.

19 MS. KING: There is an entity in the District
20 Government that looks after that.

21 MR. HOOD: Thank you.

22 CHAIRPERSON REID: All right. Any other
23 questions? There was no letter from the ANC. It was
24 submitted to the Office of Planning for review, was it not?

25 MR. BROWN: It was submitted -- the indication
26 that my office was given by them was that they were not in a

1 position to respond. That they were not going to respond to
2 it.

3 CHAIRPERSON REID: All right. Persons and
4 parties in support? Seeing none, opposition? Seeing none,
5 closing remarks by the applicant.

6 MR. BROWN: I think we have established meeting
7 the criteria. A bench decision and a summary order would be
8 greatly appreciated. Also, just to remind you, because I
9 think it does maintain some flexibility, in the order making
10 it subject to the plans as Exhibit blank subject to the
11 flexibility we discussed on the rear yard where we could go
12 from where it is shown now to not less than 10 feet in the
13 rear yard.

14 MS. KING: I so move.

15 MR. HOOD: Second.

16 CHAIRPERSON REID: Second, for all the reasons
17 given.

18 MS. PRUITT: Madam Chair, you have to vote
19 question. Since we do not have an official letter from the
20 ANC, so that is not given great weight. I just wanted to
21 clear that up for the record.

22 MS. KING: That is right.

23 CHAIRPERSON REID: Right. Right.

24 MS. PRUITT: Because in a summary order, we
25 have to address that. And I just wanted to do that.

26 CHAIRPERSON REID: Okay. All in favor?

1 ALL BOARD MEMBERS: Aye.
2 CHAIRPERSON REID: Opposed?
3 MS. PRUITT: Motion made by Ms. King and I
4 believe seconded by Mr. Hood, 3 to 0 for approval.
5 CHAIRPERSON REID: Okay.
6 MR. BROWN: Thank you very much. Good evening.
7 CHAIRPERSON REID: Thank you.
8 MS. KING: Good night.
9 (Whereupon, at 8:30 p.m., the public hearing
10 was concluded.)
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